

# OPEN GOVERNMENT GUIDE

Access to Public Records  
and Meetings in

OKLAHOMA

**REPORTERS  
COMMITTEE**  
FOR FREEDOM OF THE PRESS

Sixth Edition  
2011



# OPEN GOVERNMENT GUIDE

## OPEN RECORDS AND MEETINGS LAWS IN

# OKLAHOMA

*Prepared by:*

David McCullough  
Of Counsel

Doerner, Saunders, Daniel & Anderson  
201 Robert S. Kerr Avenue, Suite 700  
Oklahoma City, Oklahoma 73102-4203  
(405) 319-3501



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**SIXTH EDITION**  
**2011**

Previously Titled  
Tapping Officials' Secrets

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Lucy A. Dalglish, Executive Director

### **EDITORS**

Gregg Leslie, Legal Defense Director  
Mark Caramanica, Freedom of Information Director

### **ASSISTANT EDITORS**

Christine Beckett, Jack Nelson Legal Fellow  
Aaron Mackey  
Emily Peterson

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## Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

## User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

*Following the outline.* Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, [www.rcfp.org/ogg](http://www.rcfp.org/ogg). The Internet version of the outlines allows you to search the database and compare the law in different states.

*Updates:* The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at [www.rcfp.org/ogg](http://www.rcfp.org/ogg). This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.



**Prepared by:**

David McCullough  
Of Counsel  
Doerner, Saunders, Daniel & Anderson  
201 Robert S. Kerr Avenue, Suite 700  
Oklahoma City, Oklahoma 73102-4203  
(405) 319-3501

**FOREWORD**

Oklahoma has had an Open Meeting Act since 1959. The original statute consisted of a single paragraph with general language and no definitions. In 1978 the old act was repealed and replaced with a much more expansive model which has remained in place to the present time.

For more than forty years, the Oklahoma Open Records Act consisted of a single paragraph:

It is hereby made the duty of every public official of the State of Oklahoma, and of its subdivisions, who are required by law to keep public records pertaining to their said offices, to keep the same open for public inspection for proper purposes, at proper times and in proper manner, to the citizens and taxpayers of the State, and its subdivisions, during all business hours of the day; provided, however, the provisions of this Act shall not apply to income tax returns filed with the Oklahoma Tax Commission, or other records required by law to be kept secret.

51 O.S. § 24 (repealed).

This statute was subsequently re-written and has been a source of constant amendment as governmental entities attempt to expand the umbrella of confidentiality.

*Open Records Act*

The longevity of this Act was undoubtedly because the burden was on the public official to demonstrate that the record was confidential under an existing statute. However, the Oklahoma Open Records Act became the subject of amendment efforts when two 1984 Oklahoma Supreme Court decisions effectively weakened the plain meaning of the statute.

The first decision dealt with access to records maintained by the Governor concerning the expenditure of legislatively appropriated funds for his mansion account. The Court ruled that the records, even though maintained to document the expenditure of public funds, were not specifically required to be kept. *Oklahoma City News Broadcasters Ass'n Inc. v. Nigh*, 1984 OK 31, 683 P.2d 72. The statute authorizing the Governor's mansion fund was silent as to confidentiality of any records maintained on fund expenditures, *i.e.* the statute did not require the records to be kept confidential. The conflict between the Governor's office and the news media was subsequently resolved by the legislature which amended the mansion account statute to require an itemized report of all expenditures made by the Governor in the mansion account. However, this did not allow for access to records of expenditures prior to the amendment.

The second Oklahoma Supreme Court case involved access to arrest records maintained by a city police department. The high court held that state law was silent as to whether these records had to be kept by the police departments and thus under state law police departments could not be required to release these records. However, the charter of the city involved in this dispute contained a provision which required maintaining the records and thus the records were required to be released. *Oklahoma Pub. Co. v. City of Moore*, 1984 OK 40, 682 P.2d 754.

Because of these decisions and their broad impact, the Open Records Act was amended. The first significant changes included (1) the incorporation of language from the Oklahoma Open Meeting Act to define a public record and a public office as that which concerns "the

transaction of public business, the expenditure of public funds or the administering of public property"; (2) requiring that all public offices and officials maintain records concerning their office and specifically required that records "of the receipt and expenditure of any public funds effecting all financial and business transactions" be kept; and (3) requiring law enforcement bodies to make available facts concerning the arrest, conviction information, disposition of all warrants, criminal summaries, and jail registers.

While the Act did establish numerous new exemptions for some public records, the Act has been a significant improvement over the old law as interpreted by the courts.

Even though the amended Act did not contain any legislation concerning the right of privacy, the Oklahoma Supreme Court found that the right should be considered when releasing records. *Tulsa Tribune Co. v. Oklahoma Horse Racing Commission*, 1986 Okla. 24, 735 P.2d 548. In 1986, the media sought access to financial statements filed with the Oklahoma Horse Racing Commission by the successful applicant for establishing a race track and facilities in Oklahoma City. The financial data sought was submitted as part of the application process. The Oklahoma Supreme Court found that the legislators had intended to create a privacy act similar to the federal Privacy Act. The Court held that the legislature intended to provide exemptions from disclosure where the release of information possessed by a public body might be damaging to an individual. The Court not only found a "privacy act," it also established an administrative procedure to be followed when the "privacy act" was invoked. The Court held that the public body must give notice to the individual about whom the information is sought that a request has been made and that the individual has an opportunity to file a written objection to disclosure with the public body within a reasonable time following the notification. The Court did say that the burden was on the person seeking to limit disclosure to show why he was entitled to the exemption.

In its 1988 session, the Oklahoma Legislature addressed the Supreme Court ruling creating a privacy act in the Oklahoma law. The language setting forth the purpose of the act was amended to state:

As the Oklahoma Constitution recognizes and guarantees, all political power is inherent in the people. Thus, it 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 Oklahoma Open Records Act shall not create, directly or indirectly, any rights of privacy or any remedies for violation of any rights of privacy; nor shall the Oklahoma Open Records Act, except as specifically set forth in the Oklahoma Open Records Act, establish any procedures for protecting any person from release of information contained in public records. The purpose of this act is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power. The privacy interests of individuals are adequately protected in the specific exceptions to the Oklahoma Open Records Act or in the statutes which authorize, create or require the records. Except where specific state or federal statutes create a confidential privilege, persons who submit information to public bodies have no right to keep this information from public access nor reasonable expectation that this information will be kept from public access; provided, the person, agency or political subdivision shall at all times bear the burden of establishing such records are protected by such a confidential privilege. Except as may be required by other statutes, public bodies do not need to follow any procedures for providing access to public records except those specifically required by the Oklahoma Open Records Act.

51 O.S. § 24A.2.

In 1993, the Oklahoma Supreme Court recognized that the legislature had disagreed with the court's creation of an administrative procedure to protect alleged privacy interests.

These amendments [51 O.S. § 24A.2.] to the Oklahoma Open Records Act show beyond credible argument to the contrary that the legislature disagreed with our interpretation, in *Tulsa Tribune*, of the Act. . . . Given this strong public policy it is not surprising that the Act, as amended, grants no right to notice and hearing, or any other procedural protection, with respect to the records covered by the Act's terms. Further, the Act relieves public bodies of any obligation to provide any procedural protection not 'specifically required' by the Act or another statute. These provisions ensure that the public will have 'prompt and reasonable access' to governmental records.

*City of Lawton v. Moore*, 1993 OK 168, 868 P.2d 690, 692.

In 1996, the Oklahoma Court of Appeals reiterated the Supreme Court's conclusion.

There is, however, no provision in the Open Records Act which allows a court to balance an individual's interest in having records remain private and the public's interest in having access to the records. The Legislature has determined by statute that the public's interest is greater, except where specific statutory exemption is given.

*State of Oklahoma v. Migliaccio*, 1996 OK CIV APP 37, 917 P.2d 483.

The Appeals Court stated that:

In *City of Lawton*, the Court, notwithstanding its holding in *Tulsa Tribune* that notice must be given to persons affected by release of records, held Lawton was not required to give notice under the amended Act which said public bodies need follow only those procedures in the Act. The Supreme Court found the amended Act's lack of a notice requirement was intended by the Legislature to ensure the public had prompt and reasonable access to governmental records.

*Id.*

In 2009, however, an opinion issued by the Oklahoma Attorney General essentially revived the notion that an individual must be given notice before the public body can release certain information about the individual. The Attorney General noted that "the presumption would be that they [dates of birth] are open unless the exception [for privacy] is (1) claimed and (2) found to outweigh the public interest in the requested record." He further wrote that a "general policy prohibiting disclosure would constitute a legislative determination beyond the authority of the public body." 2009 OK AG 33. At issue in this opinion was the right of public bodies to deny access to portions of public documents containing identifying information (such as birth dates) of public employees. As a result of the opinion, litigation has ensued between the public employees association and several new media outlets as to the private nature of this identifying information. If the public bodies continue to deny access to identifying information about public personnel, the public will be unable to correctly discern from the name alone who is the subject of public action. This will lead to misidentifications causing more harm than the alleged privacy claim.

#### *Open Meeting Act*

While the act has been improved through the years, there are still problem areas remaining. Two of the more important areas of concern from the inception of the Act have centered upon enforcement of the act and the definition of committees and subgroups which fall under the act. These issues remain today.

*Criminal Enforcement.* The 1990s saw a greater effort on the part of some law enforcement officials to enforce the Open Meeting Act

through criminal prosecutions. On at least three occasions, criminal complaints have been filed against public officials for alleged violations of the Act. While two of the cases against public officials were dismissed — and the dismissals were upheld by the Oklahoma Court of Criminal Appeals in unreported cases — one case resulted in three members of a city commission pleading guilty to two misdemeanor counts involving violations of the Act.

In the one case where guilty pleas were entered, the commissioners had been accused of meeting among themselves and deciding to fire the city manager and replace him with another individual. Suspicion was first raised when both actions were taken without any discussion during the public meeting. A district attorney's investigator subsequently uncovered the times and locations of the meetings in which the three commissioners had made the decisions.

While the other two criminal prosecutions were dismissed by the Courts, one did lead to a change in the Act. Members of a board were charged with violating the Act when they refused to allow a member of the public to tape record the public meeting. The charges were dismissed because the Court found the Act did not specifically allow the public to tape record meetings. While the case was on appeal, the Oklahoma legislature amended the Act to include a provision for the public to record — with audio or video machines — the public meetings.

It is today very difficult to obtain a criminal prosecution of a violation of the Act. This is true even though there has been an increase in civil actions that have resulted in determinations that public bodies had violated the Act.

*Committees Appointed by Public Bodies.* In 1978, in a case which was appealed prior to but considered after the present Open Meeting Act was passed by the legislature, the Oklahoma Supreme Court upheld a lower court decision that a subcommittee was merely advisory in nature and therefore not subject to the Act. The lower court decision was, at least in part, why the Act was amended. In *Sanders v. Benton*, 1978 Okla. 53, 579 P.2d 815, the Supreme Court considered a challenge to the Board of Corrections' selection of a community treatment center site because the board's selection had been made based on recommendations by a citizens' advisory committee which did not hold any open meetings. The Court concluded that the committee was merely acting in an advisory capacity and thus would not be subject to the Act.

If *Sanders* had been decided under the amended Act, the result may have been different because a specific definition of public bodies is contained in the new Act. This definition includes virtually all groups who are appointed by and have dealings with elected public bodies and officials. The key language in the Act now provides that any entity "supported in whole or in part by public funds, or entrusted with the expending of public funds, or administering public property" shall be a "public body" for purposes of the Open Meeting Act.

However, the Supreme Court has subsequently addressed the applicability of the *Sanders* decision under the new law and has specifically upheld its application. *International Ass'n of Firefighters, Local No. 2479 v. Thorpe*, 1981 OK 95, 632 P.2d 408. The issue in *International Ass'n of Firefighters* was whether *Sanders* extended to individuals. The City Manager engaged in negotiations with the firefighters on the collective bargaining agreement. The Court held that the City Manager did not have the authority to bind city to an agreement and thus the collective bargaining negotiations were not open meetings.

Thus, an advisory committee created by a public body and having no actual or de facto decision-making authority is not subject to the Act.

# Open Records

## I. STATUTE -- BASIC APPLICATION

### A. Who can request records?

#### 1. Status of requestor.

Any person has the right of access to and review of government records. 51 O.S.O.S. § 24A.2. The Act does not limit access based on the purpose for which the documents are sought nor does it restrict future use of the information received. State agencies may not require that a requester enter into a written contract to obtain public records. 1999 OK AG 55.

#### 2. Purpose of request.

While a requester's purpose will not affect his right to receive records, if the request is for a commercial purpose, it can impact on the fees a public body may charge to make the records available. 51 O.S. O.S. § 24A.5.3. State agencies may require from requesters only information designed to allow the agency to comply with the Act. 1999 OK AG 55.

#### 3. Use of records.

While the Act generally places no restrictions on subsequent use of information provided, there is a prohibition against copying or mechanically reproducing land description tract indexes for the purpose of sale of the information. 51 O.S. § 24A.5.5

### B. Whose records are and are not subject to the act?

#### 1. Executive branch.

Records of executive office are open by the Act. 51 O.S. § 24A.3.

##### a. Records of the executives themselves.

Records of executive office are open by the Act. 51 O.S. § 24A.3.

##### b. Records of certain but not all functions.

If the record is generated in connection with the transaction of public business, the expenditure of public funds or the administering of public property, then it is a public record. 51 O.S. § 24A.3. However, the Governor's Security and Preparedness Executive Panel, created in the aftermath of the terrorist strikes on the United States, is not a public body and its records are not subject to the ORA. 2002 OK AG 5.

#### 2. Legislative bodies.

Records of the legislature or of individual legislators are not subject to the Act except for records kept and maintained on receipt and expenditure of any public funds reflecting all financial and business transactions relating thereto. 51 O.S. § 24A.3.2. However, a copy of a written or electronic communication "created by" a third-party public body or official and sent to a legislator would be a record of the creating public body or official subject to the Oklahoma Open Records Act in its custody, control or possession. A written or electronic communication from a legislator sent to a third-party public body or official would become a "record" upon being "received by" the public body or official and thereby become subject to the Act in the custody, control or possession of the third-party public body or official. 2008 OK AG 19. Records of expenses incurred by employees of the Legislature in the performance of their official duties or authorized actions which are reimbursed by the Legislature are public records. 2008 OK AG 19.

#### 3. Courts.

Court records are subject to the Act, but records of judges or justices are not except as they relate to receipt of public funds reflecting all financial and business transactions. 51 O.S. § 24A.3.2., § 24A.4. Once a pleading is filed with the Court Clerk, it must be made available for public inspection. 1999 OK AG 58.

#### 4. Nongovernmental bodies.

##### a. Bodies receiving public funds or benefits.

Any entity "supported in whole or in part by public funds" is subject to the act. 51 O.S. § 24A.3.

##### b. Bodies whose members include governmental officials.

If they have a connection with the transaction of public business, the expenditure of public funds or the administering of public property, they are covered under the act. 51 O.S. § 24A.3.

##### 5. Multi-state or regional bodies.

If they have a connection with the transaction of public business, the expenditure of public funds or the administering of public property, they are covered under the act. 51 O.S. § 24A.3.2. An entity formed by multiple counties pursuant to statutory authorization and performing a delegated function, such as self-insurance, which would otherwise be done by the individual counties and which receives funding from such county governments is subject to the Act. 1999 OK AG 37.

##### 6. Advisory boards and commissions, quasi-governmental entities.

If they have a connection with the transaction of public business, the expenditure of public funds or the administering of public property, they are covered under the act. 51 O.S. § 24A.3.2. The Grand River Dam Authority Lakes Advisory Commission, created to advise the GRDA and to provide a list of names from which the governor must appoint as a GRDA Board member, is subject to the Act. 2002 OK AG 44. The Silver Hair Legislature, composed of citizens who meet annually at the state capitol to discuss issues pertaining to senior citizens, is covered by the ORA. 2002 OK AG 42.

##### 7. Others.

If they have a connection with the transaction of public business, the expenditure of public funds or the administering of public property, they are covered under the act. 51 O.S. § 24A.3.2.

### C. What records are and are not subject to the act?

#### 1. What kind of records are covered?

All documents regardless of physical form "created by, received, under the authority of, or coming into the 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" are records available for public inspection. Records do not include computer software, non-governmental personal effects temporarily coming into the possession of a public body or official, unless disclosure is otherwise required by law, vehicle movement record of the Oklahoma Turnpike Authority obtained in connection with the electronic toll collection system, personal financial information, credit reports or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, permit or for the purpose of becoming qualified to contract with a public body. 51 O.S. § 24A.3.1. A public body that contracts with a private vendor to provide electronic access to and reproduction of the public body's records at another location or through the world wide web, is still required to provide access to its records for inspection, copying, or mechanical reproduction at the public body's office, pursuant to the Open Records Act. 2005 OK AG 3.

#### 2. What physical form of records are covered?

All physical forms of records are available for public inspection. An agency may not require execution of a contract before allowing access to records in paper form. 1999 OK AG \_\_\_\_. E-mails in either electronic form or paper form are subject to the Act. 2001 OK AG 7. While a public body may not be required to maintain records in

an electronic format, if the public body elects to maintain records in an electronic format, then the records must be provided in electronic format when requested. 2006 OK AG 35.

### 3. Are certain records available for inspection but not copying?

All records available for inspection may be copied. An agency may not create a distinction between the public's ability to inspect or copy records. 1999 OK AG 55.

#### D. Fee provisions or practices.

##### 1. Levels or limitations on fees.

"Notwithstanding any state or local provision to the contrary" a public body may recover only the reasonable, direct costs of copying and in no instance shall the cost be more than 25 cents per page for documents less than 8 1/2 x 14 inches or a maximum of one dollar for a certified copy. However, if the request is made solely for a commercial purpose or would cause excessive disruption in gathering the documents, then the public body can charge a reasonable fee to recover the direct cost of the document search. 51 O.S. § 24A.5.3. This provision has been held not to apply to court records because of a superceding state law which provides that "notwithstanding any other provision of law" court clerks may charge one dollar for copying the first page of a document and 50 cents for each subsequent page. 2009 OK AG 27. Obtaining public documents for publication in a newspaper or broadcast by news media is not considered a commercial purpose. 51 O.S. § 24A.5.3. Fees charged by the Department of Public Safety for record in computerized format shall not exceed the direct cost of making the copy unless a separate fee is established by law. 51 O.S. § 24A.5.3.

##### 2. Particular fee specifications or provisions.

###### a. Search.

If the request is solely for commercial purposes or would clearly cause excessive disruption to the public body's essential functions, then the public body may recover the direct cost of any document search. 51 O.S. § 24A.5.3. See *Transportation Information Services Inc. v. Oklahoma Dep't of Corrections*, 1998 OK 108, 970 P.2d 166 (Agency may charge reasonable fee to cover costs to write and test necessary software and to gather specific information requested). A public body may recover search fees for: "(1) the storage media used, including disk, tape, or other format unless provided by the requestor; (2) any access or processing charges imposed upon the public body because of the request; (3) any hardware or software specifically required to fulfill the request and reproduce the record in computer-readable format which would not otherwise generally be required or used by the public body; and (4) the cost of labor directly attributable to fulfilling the request." 2005 OK AG 21.

###### b. Duplication.

"Notwithstanding any state or local provision to the contrary" a public body may recover only the reasonable, direct costs of copying and in no instance shall the cost be more than 25 cents per page for documents less than 8 1/2 x 14 inches or a maximum of one dollar for a certified copy. However, if the request is made solely for a commercial purpose or would cause excessive disruption in gathering the documents, then the public body can charge a reasonable fee to recover the direct cost of the document search. 51 O.S. § 24A.5.3. This provision has been held not to apply to court records, court clerks may charge one dollar for copying the first page of a document and 50 cents for each subsequent page. 2009 OK AG 27. Obtaining public documents for publication in a newspaper or broadcast by news media is not considered a commercial purpose. 51 O.S. § 24A.5.3.

###### c. Other.

A public body may not charge a per page fee for electronic records kept in a computer-readable format. 2005 OK AG 21. Further public

bodies may not charge a fee when requesters are using their own copying equipment. 2006 OK AG 35.

### 3. Provisions for fee waivers.

No search fee can be charged for the release of documents in the public interest. Public interest includes release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants. 51 O.S. § 24A.5.3. However, a public interest request is not absolutely exempt from search fees if the request results in a substantial disruption of the agency's day-to-day operations. *McVarish v. New Horizons Community Counseling and Mental Health Services Inc.*, 1995 OK CIV APP 145, 909 P.2d 155.

#### 4. Requirements or prohibitions regarding advance payment.

There are no provisions requiring advance payment.

#### 5. Have agencies imposed prohibitive fees to discourage requesters?

The setting of fees for the purpose of discouraging a request for information or as an obstacle to disclosure of requested information is a violation of the act and the party may be civilly or criminally liable. 51 O.S. §§ 24A.5.3, 24A.17.A. However, prohibitive fees were such a problem that the Attorney General circulated a letter to all public bodies warning that some excessive fees have been charged and that a fee of no more than 25 cents per page should be assessed. The problem with excessive or non-uniform fees was addressed by the legislature when it established a cap on the cost per page. See *Transportation Information Services, supra* (fact that one state agency by statute may charge \$15 per record for a similar request does not justify second state agency from providing similar records at cost).

#### E. Who enforces the act?

##### 1. Attorney General's role.

The Attorney General is not directly involved in criminal or civil enforcement of the Act. The Attorney General will issue opinions on specific questions concerning the application of the Acts. Once these opinions are issued, covered agencies must act consistent with the opinion.

##### 2. Availability of an ombudsman.

None.

##### 3. Commission or agency enforcement.

None.

#### F. Are there sanctions for noncompliance?

Any willful violation may be prosecuted by the District Attorney's office. 51 O.S. § 24A.17.A. Any person denied access to records may bring an action for declaratory and/or injunctive relief. 51 O.S. § 24A.17.B.1. See *Lawson v. Curnutt*, 2010 OK CIV APP 78, 239 P.3d 192 (A person denied access to records may bring suit for declarative or injunctive relief but the suit shall be limited to records requested and denied prior to filing the action); See also *City of Broken Arrow v. Bass Pro Outdoor World, L.L.C.*, 2011 OK 1 (opinion is subject to revision or withdrawal)

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

### A. Exemptions in the open records statute.

#### 1. Character of exemptions.

##### a. General or specific?

Twenty specific exemptions are recognized within the act. 51 O.S. §§ 24A.7 through 24A.29.

### b. Mandatory or discretionary?

All the exemptions are discretionary. A public body or public official is not civilly liable for damages for providing access to records. 51 O.S. § 24A.17.D.

### c. Patterned after federal Freedom of Information Act?

The Oklahoma Open Records Act bears little resemblance, if any, to the federal Freedom of Information Act. Most importantly, it does not contain a corresponding Privacy Act. See discussion in Foreword concerning the privacy interests recognized under the Act.

## 2. Discussion of each exemption.

a. *Personnel records.* May be kept confidential if they relate to internal personnel investigations or where disclosure would constitute a clearly unwarranted invasion of the personal privacy of the employee. Also, any college transcripts contained in the files are confidential except as to the degree obtained and the curriculum on the transcripts of certified public employees. Finally, the home address, telephone number and Social Security number of any current or former employee shall be kept confidential. 51 O.S. § 24A.7. See also 1999 OK AG 30. A public body has the discretion to determine whether disclosing a personnel record indicating the date of birth of an employee is an unwarranted invasion of personal privacy. 2009 OK AG 3. Further, the public body may keep confidential records indicating the name of an employee who has been placed on administrative leave with pay if the action is neither a “final” or “disciplinary” action. 2009 OK AG 3.

b. *Law enforcement records.* May be kept confidential if they do not fit into the eight specific categories of records to be made available for public inspection or if they are not made open by other state or local laws. Access to the records may be denied unless the Court finds a public interest or individual interest outweighs the reason for denial. 51 O.S. § 24A.8.A-D. Registration be maintained by the Department of Corrections pursuant to the Sex Offenders’ Registration Act are open to public inspection. 51 O.S. § 24A.8.E. See also 57 O.S. § 584 E-F. Records in law enforcement officials are confidential except as specifically made public by statute. 51 O.S. § 24A.8.F-G.

c. *Personal notes.* Notes prepared as an aid to memory or research leading to adoption or implementation of a public act may be kept confidential prior to the time the action is taken. However, if the materials are part of a departmental budget request the exemption does not apply. 51 O.S. § 24A.9.

d. *Bids, appraisals, etc.* Bid specifications, contents of sealed bids, computer programs, appraisals of real estate and prospective locations of private business or industry may be kept confidential if disclosure would give an unfair advantage to competitors or bidders. This does not include records which would otherwise be open to inspection such as applications for permits or licenses. 51 O.S. § 24A.10.A-B. The Oklahoma Department of Commerce, the Oklahoma Department of Career and Technology Education, the technology center school districts and the Oklahoma Film and Music may keep much of its activities confidential. 51 O.S. § 24A.10.C. A public body that performs billing or collection services for a utility regulated by the Corporation Commission may keep confidential any customer or individual payment data obtained or created by the public body. 51 O.S. § 24A.10.D.

e. The Oklahoma Medical Center may keep confidential certain market research and marketing plans if disclosure would give an unfair advantage to competitors of the center. 51 O.S. § 24A.10.a.

f. *Library archive or museum materials.* Donated materials may be kept confidential if the donor has imposed limitations. The identity of the individual may be kept secret if anonymity is a condition of the donation. See also 2002 OK AG 27. However, if a tax deduction is claimed with the donation, the public body must make available the date of the donation, the appraised value claimed for the donation for tax purposes and a general discussion of the materials donated. 51

O.S. § 24A.11.

g. *Litigation and investigatory files.* The Attorney General, District Attorneys and Municipal Attorneys may keep litigation files confidential. 51 O.S. § 24A.12. A district attorney may keep confidential records contained in litigation files. 1999 OK AG 58.

h. *Federal records.* Records coming into possession of a public body either from a federal agency or as a result of federal legislation may be kept confidential to the extent required under federal law. 51 O.S. § 24A.13. Nursing registry information required to be compiled by federal law is exempt from disclosure under the Act. 2001 OK AG 7.

i. *Communications Received by Public Official.* Personal communications made to a public official by a person exercising a state or federal constitutional right may be kept confidential except that the public official must acknowledge receipt of the communication and whether the communication is or is not a complaint. Any official response may be kept confidential only to the extent necessary to protect the individual’s identity. 51 O.S. § 24A.14.

j. *Crop and livestock reports.* Reports provided by farmers, ranchers and agribusinesses to the Division of Agricultural Statistics may be kept confidential to the extent the report identifies the individual. 51 O.S. § 24A.15.

k. *Educational records and materials.* Such records may be kept confidential to the extent that the documents are individual student records, teacher lesson plans, tests and other material, and personal communications about the individual students. Statistical information which does not identify a particular student and directory information must be made available. Directory information may be withheld if the parent of the individual student notifies the school that the information should not be released. 51 O.S. § 24A.16.

l. *Donor Information.* Oklahoma State System of Higher Education may keep confidential all information pertaining to donors and prospective donors to or for the benefit of its institutions or agencies. 51 O.S. § 24A.16a.

m. *Research Records.* Information related to research done by a public body may be kept confidential when the disclosure of such information may affect the proprietary rights the public entity may have in the research and results of such research. 51 O.S. § 24A.19.

n. *Public Utilities.* Corporation Commission, and all entities regulated by the Commission, shall keep confidential those records of a public utility, its affiliates, suppliers and customers which are determined to be confidential books and records or trade secrets. 51 O.S. § 24A.22.

o. *Department of Wildlife Conservation.* The Department shall keep confidential the information provided by persons, including the name and address of the person, applying for or holding any permit or license issued by the Department, to the extent the information individually identifies the person. This does not apply to information provided by persons applying for or holding a commercial hunting or fishing license. 51 O.S. § 24A.23.

p. *Office of Juvenile System Oversight.* The Office may keep its investigatory records and notes confidential, unless ordered by a court of competent jurisdiction to disclose the information. 51 O.S. § 24A.24.

q. *Intergovernmental self-insurance pools.* These self-insurance pools may keep proprietary information confidential. 51 O.S. § 24A.26.

r. *Vulnerability assessments of critical assets.* State environmental agencies or public utilities may keep confidential vulnerability assessments of critical assets in both water and wastewater systems. 51 O.S. § 24A.27.

s. *Act or Threat of Terrorism.* Information relating to the investigation, deterrence, prevention or protection from an act or threat of terrorism shall be confidential as well as informational technology related to same. 51 O.S. § 24A.28.

t. *Protective Orders*. Protective orders directing the withholding or removal of pleadings or other materials from a public record may only be issued after a court has determined it is necessary in the interests of Justice. 51 O.S. § 24A.29.

#### B. Other statutory exclusions.

There are approximately 150 specific statutes which make defined documents confidential.

#### C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

*Traffic Collision Reports*. The Oklahoma Supreme Court has held that traffic collision reports do not fall within the specific categories enumerated under law enforcement records and thus are not public records under the act. *Cummings & Associates v. City of Oklahoma City*, 1993 OK 36, 849 P.2d 1087.

*Insurance Commission Records*. The Oklahoma Supreme Court has held that records of a private insurance company which came into possession of the state Insurance Commissioner under a court-ordered receivership are not public records and thus do not have to be disclosed under the Act. *Farrimond v. Fisher*, 2000 OK 52, 8 P.3d 872.

*Tape Recordings*. Tape recordings of Implied Consent Hearings before the Department of Public Safety are records under both the Open Records Act and the Records Management Act [67 O.S. § 203(a)] and copies must be provided for inspection. *Fabian & Associates, P.C. v. State ex. rel Dep't of Public Safety*, 2004 OK 67, 100 P.3d 703.

*Draft Audit Report*. In finding that a “draft” audit report of a city was a record to be produced under the Open Records Act, the Oklahoma Court of Civil Appeals held that whether a document is a record depends upon “‘the totality of the circumstances surrounding the creation, maintenance, and use of the document,’ regardless of the ‘status’ of a document as ‘preliminary’ or ‘final’”. *Intl. Union of Police Associations v. City of Lawton*, 2009 OK CIV APP 85.

#### D. Are segregable portions of records containing exempt material available?

Any reasonably segregable portion of a record containing exempt material shall be provided. 51 O.S. § 24A.5.2.

#### E. Homeland Security Measures.

The Governor’s Security and Preparedness Executive Panel, created pursuant to an Executive Order, is not subject to the Act because the panel is not a public body under the Act and documents created by the panel are therefore not public records. However, materials coming into the possession of any public official sitting on the panel may be a record under the act. 2002 OK AG 5. Any state environmental agency or public utility shall keep confidential vulnerability assessments of critical assets in both water and wastewater systems. 51 O.S. § 24A.27. Information relating to the investigation, deterrence, prevention or protection from an act or threat of terrorism shall be confidential as well as informational technology related to some. 51 O.S. § 24A.28. Also, records received, maintained or generated by the Oklahoma Office of Homeland Security which include confidential information and records received by the Oklahoma Office of Homeland Security from the United States Department of Homeland Security are confidential. *Id.*

### III. STATE LAW ON ELECTRONIC RECORDS

Included in the definition of “record” is “data files created by or used with computer software, computer tape, disk and record . . . regardless of physical form or characteristic.” 51 O.S. § 24A.3.1. Excluded from this definition of record is “computer software.”

#### A. Can the requester choose a format for receiving records?

The public body is not required to provide the record in any format other than that maintained by the public body. *See* 51 O.S. § 24A.18.

#### B. Can the requester obtain a customized search of computer databases to fit particular needs?

While this issue has not been directly addressed, the Attorney General has twice opined, when asked to examine what is a reasonable charge for providing access to electronic records, that one factor to be considered is the cost for “any hardware or software specifically required to fulfill the request and reproduce the record in computer-readable format which would not otherwise generally be required or used by the public body.” *See* 96 OK AG 26 and 2005 OK AG 21.

#### C. Does the existence of information in electronic format affect its openness?

“Record” is defined in the Act as “all documents . . . regardless of physical form or characteristic”. 51 O.S. § 24A.3(1). *See also* 2001 OK AG 46 (“If the document is created in connection with the transaction of public business, the expenditure of public funds or the administering of public property, it is a ‘record’ and is therefore subject to the Open Records Act. This is true without regard to the physical characteristics of the document.”) The Attorney General has stated that the public’s right of access to the records at times must be balanced against the obligation of an agency to protect records from destruction or alteration. 85 OK AG 36. The Attorney General found that the public body must have a system with an environment that permits electronic access and also protects the integrity of the records. Further, if the public body cannot provide the record in an electronic format and protect confidential information in the record, then the agency must provide the record in a format in which the confidential information can be redacted. 2001 OK AG 46.

If a public body contracts with a private vendor to provide electronic access to and reproduction of the public body’s records at another location or through the Internet, is still required to provide access to its records for inspection, copying, or mechanical reproduction at the public body’s office in either original or approved duplicated format. If the public body has more than one office location, its records must be maintained and made available to the public at the office where the records are located in the ordinary course of business. 2005 OK AG 3.

#### D. How is e-mail treated?

If the item is connected with the transaction of official business, the expenditure of public funds, or the administration of public property, electronic mail created by or received by either a State public body or a public body of a political subdivision constitutes a record subject to the Act. 2001 OK AG 46. Electronic mail can be retained in either electronic form or on paper. However, if it is retained on paper, the agency must ensure that sufficient documentation in other records exists elsewhere in the agency so a person seeking the information could ascertain all significant material contained in the electronic record. *Id.* A public body shall allow a requester access to specific data in the electronic format file so long as the system permitting the electronic access is secure enough to preserve the records and safeguard them from destruction or alteration. If the record contains information which is required by law to be kept confidential, and the agency cannot protect that confidential information in the electronic format, the agency must provide the information in a format which allows the confidential information to be redacted. *Id.* An electronic communication “created by” a third-party public body or official and sent to a legislator would be a record of the creating public body or official subject to the Oklahoma Open Records Act in its custody, control or possession. An electronic communication from a legislator sent to a third-party public body or official would become a “record” upon being “received by” the public body or official and thereby become subject to the Act in the custody, control or possession of the third-party public body or official. 2008 OK AG 19. Similarly, an electronic communication from an employee of the Legislature would become a “record” upon being “received by” a third-party public body or official and thereby become subject to the Oklahoma Open Records Act in the custody, control or possession of the third-party public body or official and an electronic communication “created by” a third-party public body and sent to an

employee within his or her scope and duties of the Legislature would be a record of the public body subject to the Act in the custody, control or possession of the creating agency. 2008 OK AG 19.

### 1. Does e-mail constitute a record?

So long as it is connected with the transaction of official business, the expenditure of public funds, or the administration of public property, e-mail created by or received by either a State public body or a public body of a political subdivision constitutes a record subject to the Open Records Act. 2001 OK AG 46. However, if an e-mail contains information which is required by law to be kept confidential, and if the confidential information cannot be protected in the electronic format as kept by the public body, the public body must provide the requested information in a format in which the confidential information can be redacted. 2001 OK AG 46.

### 2. Public matter on government e-mail or government hardware

If the item is connected with the transaction of official business, the expenditure of public funds, or the administration of public property, electronic mail created by or received by either a State public body or a public body of a political subdivision constitutes a record subject to the Act. 2001 OK AG 46.

### 3. Private matter on government e-mail or government hardware

While not specifically ruling on the issue, the Oklahoma Attorney General has footnoted in one opinion that an e-mail between State or local government employees making lunch plans (if such use is permitted by the agency) generally is not in connection with public business, spending public money or administering public property, and therefore generally would not be a record. The Attorney General went on to say that whether a particular e-mail message fits this definition is a question of fact. 2001 OK AG 46.

### 4. Public matter on private e-mail

The Oklahoma Attorney General has opined that who owns an electronic communications device has no bearing on whether an electronic communication created or received on that device is a record. Thus, a communication that meets the definition of a record under the ORA is subject to disclosure regardless of whether it is created or received on a publicly or privately owned personal electronic communication device, unless some provision of law allows it to be kept confidential. Further, the location of the electronic communications equipment does not matter, whether it is used in a governmental office, in a public official's or employee's home, or somewhere in transit between them. 2009 OK AG 12.

### 5. Private matter on private e-mail

E-mails 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 Oklahoma Open Records Act regardless of whether they are created, received, transmitted, or maintained by government officials on publicly or privately owned equipment and communication devices, unless some provision of law makes them confidential. 2009 OK AG 12.

## E. How are text messages and instant messages treated?

### 1. Do text messages and/or instant messages constitute a record?

So long as it is connected with the transaction of official business, the expenditure of public funds, or the administration of public property, electronic communications created by or received by either a State public body or a public body of a political subdivision constitutes a record subject to the Open Records Act. 2001 OK AG 46. In a later opinion, the Attorney General specifically included text messages in the definition of record.

### 2. Public matter message on government hardware.

If the item is connected with the transaction of official business, the expenditure of public funds, or the administration of public property, a text message created by or received by either a State public body or a public body of a political subdivision constitutes a record subject to the Act. 2001 OK AG 46; 2001 OK AG 12.

### 3. Private matter message on government hardware.

While not specifically ruling on the issue, the Oklahoma Attorney General has footnoted in one opinion that an e-mail between State or local government employees making lunch plans (if such use is permitted by the agency) generally is not in connection with public business, spending public money or administering public property, and therefore generally would not be a record. The Attorney General went on to say that whether a particular e-mail message fits this definition is a question of fact. 2001 OK AG 46.

### 4. Public matter message on private hardware.

The Oklahoma Attorney General has opined that who owns an electronic communications device has no bearing on whether an electronic communication created or received on that device is a record. Thus, a communication that meets the definition of a record under the ORA is subject to disclosure regardless of whether it is created or received on a publicly or privately owned personal electronic communication device, unless some provision of law allows it to be kept confidential. Further, the location of the electronic communications equipment does not matter, whether it is used in a governmental office, in a public official's or employee's home, or somewhere in transit between them. 2009 OK AG 12.

### 5. Private matter message on private hardware.

E-mails 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 Oklahoma Open Records Act regardless of whether they are created, received, transmitted, or maintained by government officials on publicly or privately owned equipment and communication devices, unless some provision of law makes them confidential. 2009 OK AG 12.

## F. How are social media postings and messages treated?

While there have been no decisions or legislative actions concerning social media postings and messages, the Attorney General opinions concerning electronic communications should apply. *See* 2001 OK AG 46 and 2009 OK AG 12.

## G. How are online discussion board posts treated?

While there have been no decisions or legislative actions concerning online discussion board posts, the Attorney General opinions concerning electronic communications should apply. *See* 2001 OK AG 46 and 2009 OK AG 12.

## H. Computer software

### 1. Is software public?

Computer software is not a record under the Open Records Act. 51 O.S. § 24A.3.1.a.

### 2. Is software and/or file metadata public?

Whether metadata would be public has not been addressed in the state.

## I. How are fees for electronic records assessed?

A public body may recover search fees for: "(1) the storage media used, including disk, tape, or other format unless provided by the requestor; (2) any access or processing charges imposed upon the public body because of the request; (3) any hardware or software specifically required to fulfill the request and reproduce the record in computer-

readable format which would not otherwise generally be required or used by the public body; and (4) the cost of labor directly attributable to fulfilling the request.” 2005 OK AG 21.

## **J. Money-making schemes.**

### **1. Revenues.**

There is no statutory or case law addressing this issue.

### **2. Geographic Information Systems.**

There is no statutory or case law addressing this issue.

## **K. On-line dissemination.**

There is no statutory or case law addressing this issue.

## **IV. RECORD CATEGORIES -- OPEN OR CLOSED**

### **A. Autopsy reports.**

State medical examiner reports are available to district attorneys, law enforcement officers and next of kin. 63 O.S. § 949.

### **B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)**

#### **1. Rules for active investigations.**

A public body may keep personnel records confidential which relate to internal personnel investigations including examination and selection material for demotion, discipline or resignation. 51 O.S. § 24A.7.A.1. The Oklahoma Attorney General has opined that the name of an employee who has been placed on administrative leave with pay may be kept confidential if the action constitutes neither a final or disciplinary action nor a “final disciplinary action resulting in loss of pay, suspension, demotion of position or termination.” 2009 OK AG 33.

#### **2. Rules for closed investigations.**

A public body must make available records relating to a final disciplinary action resulting in loss of pay, suspension, demotion of position or termination. 51 O.S. § 24A.7.B.4. *See also* 2009 OK AG 33.

### **C. Bank records.**

The State Banking Department is prohibited from disclosing records except those designated as public records which include applications for bank charters, records introduced at public hearings on applications, information disclosing the failure of a bank, reports of completed investigation into bank fund shortages, names of bank stockholders and officers filed with the Secretary of State and regular financial call reports. Other records may be divulged by the Commissioner after receipt of a written request. 6 O.S. § 208. The same level of confidentiality applies to credit union records which are kept by the State Banking Department. 6 O.S. § 2027. Banks are not public bodies under the ORA and are therefore not subject to its disclosure requirements, 2001 OK AG 29.

### **D. Budgets.**

The Open Records Act provides that every public body or public official has a duty to maintain records on the receipt and expenditure of any public funds. 51 O.S. § 24A.4. Public officials may keep confidential personal notes and personally created materials “other than departmental budget requests.” 51 O.S. § 24A.9.

### **E. Business records, financial data, trade secrets.**

Trade secrets in books and papers held by a person who collects premiums for insurance companies for a trust, including the identities and addresses of policyholders and certificate holders, are confidential. 36 O.S. § 1443.E. Any public body may keep confidential research information if the disclosure of the information could affect the ability to patent or copyright the research or have any other effect

on a proprietary right an entity might have in the research. 51 O.S. § 24A.19. Any information submitted or compiled by the Oklahoma Development and Finance Authority concerning marketing plans, trade secrets, financial statements or any other commercially sensitive information is confidential. 74 O.S. § 5062.6. Any information submitted to or compiled by the Oklahoma Center for the Advancement of Science and Technology concerning marketing plans, trade secrets, research concepts, financial statements, or any other proprietary information is confidential. 74 O.S. § 5060.7. The Corporation Commission may keep confidential information concerning public utility trade secrets. 51 O.S. § 24A.22. In finding that a “draft” audit report of a city was a record to be produced under the Open Records Act, the Oklahoma Court of Civil Appeals held that whether a document is a record depends upon “the totality of the circumstances surrounding the creation, maintenance, and use of the document,” regardless of the ‘status’ of a document as ‘preliminary’ or ‘final’.” *Intl. Union of Police Associations v. City of Lawton*, 2009 OK CIV APP 85.

### **F. Contracts, proposals and bids.**

Confidential to the extent that disclosure would give an unfair advantage to competitors or bidders. 51 O.S. § 24A.10. Taped conversations made in connection with the bidding process between the State Treasurer and outside securities firms are subject to the act. 1993 OK AG 2.

### **G. Collective bargaining records.**

These have not been specifically exempted by statute.

### **H. Coroners reports.**

State medical examiner reports are available to District Attorneys, law enforcement officers and next of kin. 63 O.S. § 949.

### **J. Election records.**

#### **1. Voter registration records.**

Voter registration records may be obtained on CD from the Oklahoma State Election Board. A fee schedule ranges from \$10 for a precinct to \$150 for statewide.

#### **2. Voting results.**

While there is no specific provision in the Open Records Act addressing election materials, the Oklahoma Supreme Court has determined that state statutes distinguish between “record” and “ballot” and a “ballot” is not a business record of the Election Board subject to disclosure under the Act. *Milton v. Hayes*, 1989 OK 12, 770 P.2d 14. The Court further held that should the ballot be a record, it would fall under the exception in the Act which requires a public body to keep confidential records that are not discoverable under state law. The ballot is deemed confidential.

### **L. Hospital reports.**

Information received by the State Commissioner of Health through inspection or otherwise on hospitals is confidential and not to be disclosed publicly. 63 O.S., § 1-709. Medical records and communications between a physician or psychotherapist and mental patients are privileged and confidential. 43 O.S., § 1-109.

### **M. Personnel records.**

#### **1. Salary.**

A record reflecting the gross salary of public employees is a public record. 51 O.S. § 24A.7.B.2.

#### **2. Disciplinary records.**

A record reflecting the final disciplinary action resulting in loss of pay, suspension, demotion of position, or termination is a public record. 51 O.S. § 24A.7.B.4. The Oklahoma Attorney General has determined that “a public body may keep confidential a record indicating the name of an employee who has been placed on administrative leave

with pay if, under the personnel policies of the public body, the action constitutes neither a “final” or “disciplinary” action, nor a “final disciplinary action resulting in loss of pay, suspension, demotion of position, or termination.”” 2009 OK AG 33.

### 3. Applications.

The application of a person who becomes a public official is a public record. 51 O.S. § 24A.7.B.1.

### 4. Personally identifying information.

Public bodies shall keep confidential the home address, telephone numbers and social security numbers of any person employed or formerly employed by the public body. 51 O.S. § 24A.7.D. The Oklahoma Attorney General issued an opinion greatly expanded the definition of personally identifying information, holding that a “public body has discretion to determine that disclosing a personnel record indicating the date of birth of an employee of the public body is an “unwarranted invasion of [the] personal privacy” of the employee under the Open Records Act. In making such a determination, the public body must weigh the employee’s interest in nondisclosure against the public’s interest in disclosing the record. If the public body determines that the employee’s interest in nondisclosure is greater, it may keep the birth date confidential and disclose the remainder of the personnel record.” 2009 OK AG 33.

### 5. Expense reports.

Every public body and public official has a specific duty to keep and maintain complete records of receipt and expenditure of public funds. 51 O.S. § 24.A.4. The Oklahoma Attorney General has determined the statute requires the state legislature and its employees to make records of expense reimbursements available under the Open Records Act. 2008 OK AG 19.

## N. Police records.

### 1. Accident reports.

While not specifically addressed in the Open Records Act, Oklahoma statutes provide that accident reports are to “be made available as soon as practicable upon request” to newspapers and broadcasters.” 47 O.S. § 40.102.A.2.j-k.

### 2. Police blotter.

Police blotters (51 O.S. § 24A.1-3) and jail blotters (51 O.S. § 24A.8) are public records under the Act.

### 3. 911 tapes.

911 tapes are public records under the Act. 51 O.S. § 24A.8.A.4.

### 4. Investigatory records.

#### a. Rules for active investigations.

The Attorney General, district attorneys and municipal attorneys may keep their litigation files and investigatory reports confidential. 51 O.S. § 24A.12.

#### b. Rules for closed investigations.

There is no statutory or case law addressing this issue.

### 5. Arrest records.

Arrest records are available for public inspection. 51 O.S. § 24A.8.A.

### 6. Compilations of criminal histories.

There is no statutory or case law addressing this issue.

### 7. Victims.

Police incident reports are public record. 51 O.S. § 24A.8.A.

### 8. Confessions.

There is no statutory or case law addressing this issue.

### 9. Confidential informants.

There is no statutory or case law addressing this issue.

### 10. Police techniques.

Audio and video recordings of the Department of Public safety are not records under the Act. 51 O.S. § 24A.3.1.b.3.

### 11. Mug shots.

Mug shots are public records as a part of the law enforcement records. 51 O.S. § 24A.8.A.

### 12. Sex offender records.

Sex offender registry is available for public inspection and copying and is also available through internet access. 57 O.S. § 584.

## O. Prison, parole and probation reports.

Pardon and Parole Board is a public body whose records are subject to review under the Open Records Act. 1988 OK AG 87.

## P. Public utility records.

The amount of money spent by a public service corporation to secure rights-of-way, to engage in construction or to reconstruct existing facilities is a matter of public record. Okla. Const. Art. 9, § 29. Although they must provide public access to their records, including records of the name, address, rate paid for services, charges, and payment for each customer, public bodies that provide utility services to the public may keep confidential credit information, credit card numbers, telephone numbers, and bank account information for individual customers. 51 O.S. § 24A.9.D. The Corporation Commission shall keep confidential those records of a public utility, its affiliates, suppliers and customers which the Commission determines are confidential books, records, or trade secrets. 51 O.S. § 24A.22. A public body that performs billing or collection services for a utility regulated by the Corporation Commission may keep confidential any customer or individual payment data obtained or created by the public body. 51 O.S. § 24.A.10.D.

## Q. Real estate appraisals, negotiations.

### 1. Appraisals.

A public body may keep confidential records relating to appraisals for the sale or acquisition of real estate if disclosure would give an unfair advantage to competitors or bidders. 51 O.S. § 24A.10.B.5. The records would be available for public inspection after the sale or acquisition is completed.

### 2. Negotiations.

There is no statutory or case law addressing this issue.

### 3. Transactions.

Bid specifications and contents of sealed bids may be kept confidential prior to opening of the bids if disclosure would give an unfair advantage to competitors or bidders. 51 O.S. § 24A.10.B.1-2.

### 4. Deeds, liens, foreclosures, title history.

Deeds, liens, foreclosures and title histories are maintained with the County Clerk and are open for public inspection.

### 5. Zoning records.

Zoning records are maintained with the County Clerk and are open for public inspection.

## R. School and university records.

### 3. Student records.

If kept, statistical information not identified with a particular student and directory information shall be open for inspection and

copying. “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, and the most recent previous educational institution attended by the student. Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as directory information with respect to each student attending the institution or agency and shall allow a reasonable period of time after the notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without prior consent of the parent or guardian or the student if the student is eighteen (18) years of age or older. 51 O.S. 24A.16.B

## S. Vital statistics.

### 1. Birth certificates.

A birth certificate is deemed confidential and may not be disclosed. 63 O.S. § 1-323(A). See 2009 OK AG 33 (“vital statistics record such as a birth certificate, and the information contained therein, that is part of the Department of Health’s vital statistics system is confidential”)

### 2. Marriage & divorce.

Marriage and divorce records are filed with the District Court and may be accessed through the Courts.

### 3. Death certificates.

A death certificate is deemed confidential and may not be disclosed. 63 O.S. § 1-323(A).

### 4. Infectious disease and health epidemics.

The individual forms, computer tapes, or other forms of data collected by and furnished to the Division of Health Care Information or to a data processor pursuant to the Oklahoma Health Care Information System Act shall be confidential and shall not be public records as defined in the Open Records Act. 63 O.S. § 1-120.

## V. PROCEDURE FOR OBTAINING RECORDS

### A. How to start.

#### 1. Who receives a request?

The public body must designate the person to receive the request. 51 O.S. §§ 24A.5.6., 24A.6.

#### 2. Does the law cover oral requests?

##### a. Arrangements to inspect & copy.

The law defines neither written nor oral requests. The Oklahoma Court of Appeals states the Open Records Act contains no provision for dictating the manner in which to make a request for inspection of a record. *Intl. Union of Police Associations v. City of Lawton*, 2009 OK CIV APP 85 ¶ 14. The public body is compelled to provide prompt reasonable access to the records upon request. 25 O.S. § 24A.5.5. See *In the Matter of the Petition of University Hospitals Authority*, 1997 OK 162, 953 P.2d 314 (Contract made available to the public two days before consideration in an open meeting was timely when the record was provided as soon as it came into existence).

##### b. If an oral request is denied:

#### (1). How does the requester memorialize the refusal?

The requester should make the same request in writing.

#### (2). Do subsequent steps need to be in writing?

The written request should direct the public body to state the specific statute it is relying upon to deny access to the record.

### 3. Contents of a written request.

#### a. Description of the records.

If a written request is made, the records sought should be described as specifically as possible. This would be especially essential if the search is not exempt from assessment of a search fee.

#### b. Need to address fee issues.

If possible, every request should state that the request is made in the public interest so as to avoid the possibility of being assessed a search fee. The request should contain a cap the requester is willing to pay for the documents and an indication that the requester should be contacted if the cost will exceed the stated cap.

#### c. Plea for quick response.

The Act requires a public body to grant “prompt, reasonable access.” A person should consider placing a time limit in the written request on the production of the record to establish a record for future legal action.

#### d. Can the request be for future records?

There is no specific provision for requesting future records. The practical problem of requesting future records is that the request may not be promptly acted upon at a future date because the act lacks any specific provisions. It would be advisable to request the record at the time it is discovered.

### B. How long to wait.

The act does not address specific time limits. It is therefore advisable that a time for the response be included with the written request.

#### 1. Statutory, regulatory or court-set time limits for agency response.

Statute does not address specific time limits.

#### 2. Informal telephone inquiry as to status.

Not applicable.

#### 3. Is delay recognized as a denial for appeal purposes?

Statute does not address specific time limits

#### 4. Any other recourse to encourage a response.

Not applicable.

### C. Administrative appeal.

The act does not provide for an administrative appeal.

#### 1. Time limit.

Not applicable.

#### 2. To whom is an appeal directed?

Not applicable.

##### a. Individual agencies.

Not applicable.

##### b. A state commission or ombudsman.

Not applicable.

##### c. State attorney general.

Not applicable.

#### 3. Fee issues.

Not applicable.

#### 4. Contents of appeal letter.

Not applicable.

**a. Description of records or portions of records denied.**

Not applicable.

**b. Refuting the reasons for denial.**

Not applicable.

**5. Waiting for a response.**

Not applicable.

**6. Subsequent remedies.**

Not applicable.

**D. Court action.**

**1. Who may sue?**

Any person denied access may bring a civil action. 51 O.S. § 24A.17.B.

**2. Priority.**

There are no provisions for expediting an access to records case.

**3. Pro se.**

While it is possible to proceed *pro se*, the act does allow for the recovery of reasonable attorney fees if successful. Because the act allows a cause of action for injunctive and declaratory relief, both requiring specialized pleading, it would be advisable to use an attorney and seek recovery of the fees.

**4. Issues the court will address:**

**a. Denial.**

Any person denied access may bring a civil action. 51 Okla. Stat. Supp. 2005, § 24A.17.B.

**b. Fees for records.**

Excessive fees may not be charged for copying records and any violation of the act creates criminal or civil liability.

**c. Delays.**

A public body must provide “prompt, reasonable access” to records. 51 O.S. § 24A.5.5.

**d. Patterns for future access (declaratory judgment).**

Declaratory judgments may be sought. 51 O.S. § 24A.17.B.

**5. Pleading format.**

A petition should allege that a record is in the hands of a public officer or office, and that official has failed to make the record available for inspection. 51 O.S. § 24A.17.

**6. Time limit for filing suit.**

The statute of limitations for such a suit would be two years. 12 O.S. § 95.

**7. What court.**

State District Court.

**8. Judicial remedies available.**

Injunctive or declaratory relief. 51 O.S. § 24A.17.B.

**9. Litigation expenses.**

Attorney fees are available to a party successfully gaining access to records held by public officials. *Id.*

**a. Attorney fees.**

Attorney fees may be recovered by the successful plaintiff. *See Lawson v. Curnutt*, 2010 OK CIV APP 78 (Plaintiff may recover attorney fee if successful).

**b. Court and litigation costs.**

Court costs may be awarded but it is at the discretion of the Court. 12 O.S. § 927.

**10. Fines.**

A public official found guilty of violating the Open Records Act may be fined up to \$500. 51 O.S. § 24A.17.A.

**11. Other penalties.**

A public official convicted of violating the Act may be sentenced to up to one year in county jail. 51 O.S. § 24A.17.A.

**12. Settlement, pros and cons.**

If a dispute exists, a settlement which results in the release of the records in a more timely manner is in the best interest of the media. However, this should be weighed against the extent to which the record might not be produced in its entirety in a compromise settlement.

**E. Appealing initial court decisions.**

**1. Appeal routes.**

A final order may be appealed to the Oklahoma Supreme Court. 12 O.S. § 952. The case may then be assigned to the Court of Appeals by the Supreme Court.

**2. Time limits for filing appeals.**

A petition in error must be filed within thirty (30) days from a final judgment or order. 12 O.S. Ch. 15, App. 2, Rule 1.15(a).

**3. Contact of interested amici.**

*Amicus* briefs may be filed by consent of the parties or by leave of the Chief Justice of the Supreme Court. The *amicus curiae* must file a statement not exceeding five pages disclosing the nature of the interest, the factual or legal questions which are not adequately addressed by the litigants and the relevancy of the factual or legal questions to the disposition of the case. Upon a showing of extraordinary circumstances, the *amicus curiae* may be allowed to participate in oral arguments. 12 O.S.Ch. 15, App. 2, Rule 1.28a.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state’s highest court.

**F. Addressing government suits against disclosure.**

There have been no suits brought to date by governmental entities seeking to prevent disclosure of public records.

# Open Meetings

## I. STATUTE -- BASIC APPLICATION.

### A. Who may attend?

Any person may attend meetings of a public body. 25 O.S. § 303.

### B. What governments are subject to the law?

#### 1. State.

All boards, bureaus, commissions, agencies, etc. of the state except the state judiciary, state legislature and administrative staff of public bodies, when the administrative staff is not meeting with the public body, are covered. 25 O.S. § 304.1.

#### 2. County.

Boards of County Commissioners and their committees and subcommittees are public bodies under the Act. 25 O.S. § 304.1.

#### 3. Local or municipal.

All governing bodies of municipalities and their committees or subcommittees are public bodies covered under the act. 25 O.S. § 304.1.

### C. What bodies are covered by the law?

#### 1. Executive branch agencies.

All state agencies supported in whole or in part by public funds, or entrusted with the expending of public funds, or administering public property, are public bodies under the act except administrative staffs of public bodies, when administrative staffs are not meeting with the public body. 25 O.S. § 304.1. Any meeting between the Governor and a majority of members of any public body is open to the public. 25 O.S. § 308.

Administrative staffs of public bodies, including faculty meetings and athletic staff meetings of institutions of higher education, are not covered by the Act.

##### a. What officials are covered?

The Act does not apply to “officials” but rather to “public bodies.” However, under the Open Records Act, “public official” means “any official or employee of any public body.” 51 O.S. § 24A.3(4). The Governor’s Security and Preparedness Executive Panel, a majority of its members being public officials, has been found to not be subject to the Open Meetings Act. *See* 2002 OK AG 5. “[T]he mere presence on the panel of people who may be public officials in other facets of government does not in and of itself render the panel a public body.” *Id.*

##### b. Are certain executive functions covered?

Any meeting between the Governor and a majority of members of any public body is covered. 25 O.S. § 308.

##### c. Are only certain agencies subject to the act?

All “agencies” are covered under the Act. 25 O.S. § 304(1). Agencies are determined in 74 O.S. § 3301 as “any board, commission, department, authority, bureau, office or other entity created with authority to make rules or formulate orders as defined in the Administrative Procedures Act.”

#### 2. Legislative bodies.

The state legislature is exempt from the definition of public body for purposes of the act. 25 O.S. § 304.1. Open meetings of the legislature are conducted in accordance with rules adopted by each house thereof. 25 O.S. § 309. County and local legislative and governing bodies are covered by the act. 25 O.S. § 304.1.

#### 3. Courts.

The state judiciary is exempt under the definition of public body for purposes of the act. 25 O.S. § 304.1. Further, the Council on Judicial

Complaints is exempt when conducting, discussing or deliberating any matter relating to a complaint received or filed with the Council. *Id.* Bar disciplining proceedings are not subject to the Act. *State ex rel. Oklahoma Bar Ass’n v. Mintor* 2001 OK 69, 37 P.3d 763.

#### 4. Nongovernmental bodies receiving public funds or benefits.

All boards, bureaus, commissions, agencies, trusteeships, authorities, councils, committees, public trusts, or any entity created by a public trust, task forces or study groups in the State of Oklahoma supported in whole or in part by public funds, or entrusted with the expending of public funds, or administering public property are public bodies for purposes of the act. 25 O.S. § 304.1. Private organizations are subject to the Act if (1) they do not submit itemized invoices for goods or services provided and instead receive a direct allocation of public funds from tax or other revenues or (2) there is no quid pro quo between the amount of goods, and services provided and the funds received, i.e. the organization receives funds regardless of whether they provide goods and services. 2002 OK AG 37.

#### 5. Nongovernmental groups whose members include governmental officials.

If the body is supported in whole or in part by public funds or entrusted with the expending of public funds, or administering public property, then it is covered under the act. 25 O.S. § 304.1. If a majority of the public body sits as members of the non-governmental group, and the non-governmental body makes recommendations to the public body, then the non-governmental group would also be covered under the act. 25 O.S. § 306; *see also* 1982 OK AG 212.

#### 6. Multi-state or regional bodies.

If a body is supported by public funds or has actual or *de facto* decision-making authority to bind a governmental body, then a multistate or regional body is subject to the act. 1981 OK AG 311. An entity that is formed by multiple counties pursuant to statutory authorization and performs a delegated function, such as self-insurance, that would otherwise be done by the individual counties and that receives funding from such county governments is subject to the Act. 1999 OK AG 37.

#### 7. Advisory boards and commissions, quasi-governmental entities.

Public body for purposes of the act “shall” include all committees or subcommittees of any public body, except that meetings conducted by Stewards of the Oklahoma Horse Racing Commission are not covered when they are officiating at races or otherwise enforcing rules of the Commission. 25 O.S. § 304.1. However, the Oklahoma Supreme Court has disregarded this legislative mandate, and held that not all committees and subcommittees of any public body are covered under the act. If the subordinate entity exercises actual or *de facto* decision-making authority, then it must comply with the act. *International Ass’n of Firefighters, Local 2479 v. Thorpe*, 1981 OK 95, 632 P.2d 408; *Sanders v. Benton*, 1978 OK 53, 579 P.2d 815. If the subordinate entity has a purely recommendatory, informational, fact-finding or advisory purpose with no decision-making authority, then it is not subject to the act. *Andrews v. Indep. School Dist. No. 29 of Cleveland County*, 1987 OK 40, 737 P.2d 929. The Oklahoma State Textbook Committee is a public body under the Act. 2002 OK AG 7.

#### 8. Other bodies to which governmental or public functions are delegated.

All boards, bureaus, commissions, agencies, trusteeships, authorities, councils, committees, public trusts, or any entity created by a public trust, including any committee or subcommittee composed of any of the members of a public trust or other legal entity receiving funds from the Rural Economic Action Plan Fund, task forces or study groups in the State of Oklahoma entrusted with the expenditure of public funds or administering public property are public bodies for purposes of this act. 25 O.S. § 304.1. The Grand River Dam Authority Lakes Advisory Commission is subject to the Act. 2002 OK AG 44.

## 9. Appointed as well as elected bodies.

If the body is supported in whole or in part by public funds or entrusted with the expending of public funds, or administering public property, then it is covered under the act. 25 O.S. § 304.1. If a majority of the public body sits as members of the non-governmental group, and the non-governmental body makes recommendations to the public body, then the non-governmental group would also be covered under the act. 25 O.S. § 306; *see also* 1982 OK AG 212. However, the body must meet the definition of Agency found elsewhere under state law or the appointed body may not be subject to the Act. *See* 2002 OK AG 5.

### D. What constitutes a meeting subject to the law.

#### 1. Number that must be present.

A meeting is the conducting of business of a public body by a majority of its members meeting together. 25 O.S. § 304.2. *International Ass'n of Firefighters, supra* (key consideration is the public nature of the work of the group). *Rogers v. Excise Board of Greer County*, 1984 OK 95, 701 P.2d 754 (meetings held on legal holidays in locked public buildings do not comply with the law). A meeting may also be held by videoconference when a public body has been granted such authority by the legislature. 25 O.S. §§ 304.2 and 304.7; 25 O.S. § 306.

##### a. Must a minimum number be present to constitute a “meeting”?

A majority is required. *Id.* *See also Monkey Island Development Authority v. Paul Staten*, 2003 OK CIV APP 64, 76 P.3d 84 (rejecting a claim that a meeting violated the Act, stating “Without a majority, there could be no ‘meeting’ under the Act and no violation”).

##### b. What effect does absence of a quorum have?

No meeting of the public body can take place unless a majority of the members is present. *Id.*

#### 2. Nature of business subject to the law.

##### a. “Information gathering” and “fact-finding” sessions.

Informal gatherings or any electronic or telephonic communications, except specified teleconferences, are prohibited. 25 O.S. § 306. Except for the specific exemptions for executive sessions, all business conducted by the public body is subject to the act. *In re Appeal of the Order Declaring Annexation Dated June 28, 1978*, 1981 OK CIV APP 57, 637 P.2d 1270 (act covers not only formal meetings but entire decision-making process).

##### b. Deliberations toward decisions.

Engaging in deliberations or rendering a final or intermediate decision in a proceeding authorized under the Oklahoma Administrative Procedure Act may be conducted in executive session. 25 O.S. § 307.B.8.

#### 3. Electronic meetings.

No electronic or telephonic communications, except for videoconferences specifically allowed in 25 O.S. § 307.1, among a majority of the members of a public body shall be used to decide any action or take any vote. No executive session may be conducted by videoconference. 25 § 307.1.B.

##### a. Conference calls and video/Internet conferencing.

No electronic or telephonic communications, except for videoconferences specifically allowed in 25 O.S. § 307.1, among a majority of the members of a public body shall be used to decide any action or take any vote.

##### b. E-mail.

There is no statutory or case law addressing this issue.

##### c. Text messages.

There is no statutory or case law addressing this issue.

##### d. Instant messaging.

There is no statutory or case law addressing this issue.

##### e. Social media and online discussion boards.

There is no statutory or case law addressing this issue.

### E. Categories of meetings subject to the law.

#### 1. Regular meetings.

##### a. Definition.

The act defines “regularly scheduled meeting” as a meeting at which the regular business of the public body is conducted. 25 O.S. § 304.3.

##### b. Notice.

##### (1). Time limit for giving notice.

All public bodies must give written notice by December 15th of the schedule showing the date, time and place of all regularly scheduled meetings of the public body for the next calendar year. 25 O.S. § 311.1. Any change to the schedule must be given to the appropriate authorities (Secretary of State, county clerk or municipal clerk) as required under the law not less than ten (10) days prior to implementation of the change. 25 O.S. § 311.8. Notices must also be posted in prominent public view at the principal office of the public body or at the location of the meeting if no public office exists at least 24 hours prior to the meeting excluding Saturdays, Sundays and legal holidays. 25 O.S. § 311.9.

##### (2). To whom notice is given.

All state agencies must give notice to the Secretary of State; county agencies must give notice to the County Clerk; municipalities must give notice to the municipal clerk; and multicounty, regional, areawide or district public bodies must give notice to the county clerk where the body is located or where the public is served.

##### (3). Where posted.

The public notice must be posted in prominent public view at either the principal office of the public body or, if no office exists, at the location of the public meeting. 25 O.S. § 311.9. The Notice and Agenda must be visible before and after business hours. 1997 OK AG 98.

##### (4). Public agenda items required.

The notice must contain all items to be considered at the public meeting. Any item not posted on the notice cannot be considered except that the public body may consider “new business” which is “any matter not known about or which could not have been reasonably foreseen prior to the time of posting.” 25 O.S. § 311.9. The agenda must be plainly worded so that a person of ordinary education and intelligence can comprehend. *Hayworth Bd. of Education v. Havens*, 1981 Okla. Civ. App. 56, 637 P.2d 902 (agenda item stating school board to interview new administrator held insufficient for board action of hiring administrator). In addition, if an executive session is proposed, the agenda must contain sufficient information for the public to ascertain that an executive session will be proposed, identify the items of business and purposes of the executive session, and state specifically the statutory authority for an executive session. 25 O.S. § 311.B.2.

##### (5). Other information required in notice.

The date, time and place of the public meeting. 25 O.S. § 311.9. Including the date, place and time without including an agenda of the meeting is insufficient notice. *Hillary v. State*, 1981 Okla. 78, 630 P.2d 791.

##### (6). Penalties and remedies for failure to give adequate notice.

Language used by legislature in the public policy section of the act, together with the inclusion of a penal penalty, makes it a penal statute

which must be strictly construed. *State v. Patton*, 1992 Okla. Crim. 57, 837 P.2d 483. All actions taken which are in willful violation of the Open Meetings Act are invalid. 25 O.S. § 313. *Hayworth, supra* (board hiring of superintendent without meeting agenda requirements invalidated); *In re Appeal of the Order Declaring Annexation Dated June 28, 1978, supra* (vote on annexation held without public body compliance with act held invalid); *Okmulgee County Rural water Dist. No. 2 v. Beggs Public Works Authority*, 2009 OK CIV APP 51, 211 P.3d 225 (Absent posted notices of its intent to consider the 2004 water contract, Beggs' execution and approval of the 2004 contract is invalid as "exceed[ing] the scope of action defined by the notice[s]."). Persons who willfully violate the provisions of the act are guilty of a misdemeanor and upon conviction can be fined \$500 or imprisoned in county jail for one year, or both. 25 O.S. § 314. *Hillary v. State, supra* (defendant fined after being found guilty of violating the Open Meeting Act on three separate occasions when agendas for public meetings were not posted). See 2002 OK AG 07 (vote to add disclaimer to textbooks invalid because agenda did not contain sufficient notice to public that such disclaimer was to be discussed).

### c. Minutes.

#### (1). Information required.

The minutes of a public meeting must contain an official summary of the proceedings which shows the members absent and present, the matters considered and the actions taken. 25 O.S. § 312.A. All votes must also be publicly cast and recorded. 25 O.S. § 305.

#### (2). Are minutes public record?

Yes. 25 O.S. § 312.A. Further, any person attending a public meeting may record the meeting by videotape, audiotape, or other means provided such recording does not interfere with the conduct of the meeting. 25 O.S. § 312.C.

## 2. Special or emergency meetings.

### a. Definition.

A special meeting of a public body is one that is not regularly scheduled or not an emergency. 25 O.S. § 304.4. An emergency meeting is one called when a situation involves injury to persons or injury and damage to public or personal property or immediate financial loss and the time requirements for public notice of a special meeting would make such procedure impractical and increase the likelihood of injury or damage or immediate financial loss. 25 O.S. § 304.5.

### b. Notice requirements.

#### (1). Time limit for giving notice.

For a special meeting, public notice must be given to the appropriate notifying authorities (Secretary of State, county clerk or municipal clerk) at least 48 hours prior to the meeting. In addition, the notice must be posted at least 24 hours prior to the meeting excluding Saturdays, Sundays and legal holidays. 25 O.S. § 311.11. For an emergency meeting, as much advance notice "as is reasonable and possible under the circumstances" must be given. 25 O.S. § 311.12. *Weeks v. Northeast Oklahoma Area Vo-Tech School*, 1982 OK CIV APP 16, 657 P.2d 1205 (emergency board meeting called to vote on non-renewal of teachers' contract justified when school system faced loss of \$70,000 if vote not immediately taken).

#### (2). To whom notice is given.

For a special meeting, notice is given to the general public by displaying it prior to the meeting. Also, notice must be mailed or delivered to any person, newspaper, wire service, radio station, and television station at least 48 hours prior to the special meeting if a written request for such notice has been filed with the public body. A charge of up to \$18 per year may be assessed against persons or entities who file such requests. 25 O.S. § 311.11. For an emergency meeting, as much notice as possible must be given to the public. 25 O.S. § 311.12.

### (3). Where posted.

For a special meeting, the notice must be posted in prominent view at the public body's principal office or, if no office exists, at the location of the meeting. 25 O.S. § 311.11. For an emergency meeting, the notice must be given in person or by telephonic or electronic means. 25 O.S. § 311.12.

### (4). Public agenda items required.

Only the specific matters listed on the posted agenda may be considered. 25 O.S. §§ 311.11, 311.12.

### (5). Other information required in notice.

The notice must contain the date, time, place and agenda for the meeting. 25 O.S. §§ 311.11, 311.12.

### (6). Penalties and remedies for failure to give adequate notice.

Language used by legislature in the public policy section of the act, together with the inclusion of a penal penalty, makes it a penal statute which must be strictly construed. *State v. Patton, supra*. All actions taken which are in willful violation of the Open Meetings Act are invalid. 25 O.S. § 313. *Hayworth, supra* (board hiring of superintendent without meeting agenda requirements invalidated); *In re Appeal of the Order Declaring Annexation Dated June 28, 1978, supra* (vote on annexation held without public body compliance with act held invalid). Persons who willfully violate the provisions of the act are guilty of a misdemeanor and upon conviction can be fined \$500 or imprisoned in county jail for one year, or both. 25 O.S. § 314. *Hillary v. State*, 1981 OK CR 78, 630 P.2d 791 (defendant fined after being found guilty of violating the Open Meeting Act on three separate occasions when agendas for public meetings were not posted).

### c. Minutes.

#### (1). Information required.

The minutes of a public meeting must contain an official summary of the proceedings which shows the members absent and present, the matters considered and the actions taken. 25 O.S. § 312.A. All votes must also be publicly cast and recorded. 25 O.S. § 305. When the minutes are of an emergency meeting, the minutes must also contain the nature of the emergency and the reasons for declaring such emergency meeting. 25 O.S. § 312.B.

#### (2). Are minutes a public record?

Yes. 25 O.S. § 312.A. Further, any person attending a public meeting may record the meeting by videotape, audiotape, or other means provided such recording does not interfere with the conduct of the meeting. 25 O.S. § 312.C.

## 3. Closed meetings or executive sessions.

### a. Definition.

A public body may remove itself from a public meeting to discuss specified matters set forth in the legislature. 25 O.S. § 307. However, the executive session provisions of the act do not themselves create any legal privileges that require matters to be kept confidential and therefore, in any given instance in which an executive session may be held, the public body must determine whether an executive session is warranted. 1992 OK AG 23. Provisions of a "home rule" city charter requiring all meetings to be open must yield to the state law on executive sessions and thus the public body can go into executive session as allowed under state law. *City of Kingfisher v. Oklahoma*, 1998 OK CIV APP 39, 958 P.2d 170.

### b. Notice requirements.

#### (1). Time limit for giving notice.

The proposed executive session must appear on the agenda of the regular, special or emergency meeting.

**(2). To whom notice is given.**

Notice is the same as the requirement for notice of a regular, special or emergency meeting.

**(3). Where posted.**

The agenda is posted in the same place as required by the particular meeting in which the executive session is a part.

**(4). Public agenda items required.**

The agenda shall contain sufficient information for the public to ascertain that an executive session will be proposed, identify the item of business and purpose for the executive session and state the specific statutory authorization for the executive session. 25 O.S. § 311.B.2. When discussing personnel, the agenda must identify either the person or the position; however, identification by name must be made unless the position is unique to an individual. 1997 OK AG 61.

**(5). Other information required in notice.**

The items to be discussed on the agenda are limited to the areas which are specifically outlined under the Act. Public notice posted in advance of a meeting shall state if such meeting will be conducted via video conferencing. 25 O.S. § 307.1.A.2.

**(6). Penalties and remedies for failure to give adequate notice.**

Any willful violation can result in a misdemeanor prosecution. 25 O.S. § 307.F.1. If the act is violated all minutes and other records of the executive session, including tape recordings, are immediately made public. 25 O.S. § 307.F.2.

**c. Minutes.****(1). Information required.**

The minutes of an executive session must contain an official summary of the proceedings which occurred in executive session. 25 O.S. § 312.A.

**(2). Are minutes a public record?**

No. However, all votes or action concerning executive session discussions must be publicly cast and recorded. 25 O.S. § 307.E.3. *Graybill v. Oklahoma State Board of Education*, 1978 OK 124, 585 P.2d 1358 (public announcement in front of board members of 5-0 vote taken in executive session satisfies requirement of publicly recording vote).

**d. Requirement to meet in public before closing meeting.**

A majority of the quorum of members present must vote to go into executive session. 25 O.S. § 307.E.2. However, the Board of Regents of Oklahoma Colleges still holds an executive session only upon a unanimous vote of all present. Okla. Const. Art. XIII-B, § 1.

**e. Requirement to state statutory authority for closing meetings before closure.**

The act explicitly requires that the agenda must state specifically the section of the law authorizing the executive session. 25 O.S. § 307.B.

**f. Tape recording requirements.**

There is no requirement for tape recording sessions.

**F. Recording/broadcast of meetings.****1. Sound recordings allowed.**

Any person may record "by videotape, audiotape or by any other method" a public meeting provided the act of recording does not interfere with the conduct of the meeting. 25 O.S. § 312.C.

**2. Photographic recordings allowed.**

Any person may record "by videotape, audiotape or by any other method" a public meeting provided the act of recording does not interfere with the conduct of the meeting. 25 O.S. § 312.C.

**G. Are there sanctions for noncompliance?**

Any action taken by the public body in willful violation of the Act shall be invalid. 25 O.S. § 313. Further, any person willfully violating any provision of the Act shall be guilty of a misdemeanor punishable by up to \$500 fine and/or one year in county jail. 25 O.S. § 314.

**II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS****A. Exemptions in the open meetings statute.****1. Character of exemptions.****a. General or specific.**

Specific. *See* 25 O.S. §§ 307.B-D.

**b. Mandatory or discretionary closure.**

Discretionary. *See* 25 O.S. §§ 307.B-C. A public body may remove itself from a public meeting to discuss specified matters set forth in the legislature. 25 O.S. § 307. However, the executive session provisions of the Act do not themselves create any legal privileges that require matters to be kept confidential and therefore, in any given instance in which an executive session may be held, the public body must determine whether an executive session is warranted. 1992 OK AG 23.

**2. Description of each exemption.**

Public bodies may discuss appointments, hiring, employment, promotion, demotion, disciplining or resignation of a salaried public official or employee in a closed meeting. 25 O.S. § 307.B.1. The term "employment includes continued employment and the conditions of employment such as place of employment, salary, duties to be performed and evaluations." *Isch v. Oklahoma Independent School District No. 1-89*, 1998 OK CIV APP 90, 963 P.2d 18. However, a public body cannot go into executive session for discussion of a job opening for a public officer or employee when no particular individual is to be discussed. 2006 OK AG 17. Discussions to consider awarding a contract for professional services when the recipient will be an independent contractor, rather than a public officer or employee of the public body, is also not a proper subject for an executive session. 2005 OK AG 29.

Public bodies may discuss negotiations concerning employees and representatives of employer groups. 25 O.S. § 307.B.2.

Public bodies may discuss the purchase or appraisal of real property. 25 O.S. § 307.B.3. However, the public body is restricted as to the persons who may be present in such executive sessions. 25 O.S. § 307.D. *See Lafalier v. The Lead-Impacted Communities Relocation Assistance Trust*, 2010 OK 48, 237 P.3d 181 (Trust found to have violated Open Meet Act by allowing persons not authorized under 307.D. to attend executive session wherein the appraisal and purchase of real property was discussed.) Further, the Attorney General has determined that section 307.B.3 authorizes a public body to meet in executive session to discuss the purchase or appraisal of real property, but contains no authority allowing a public body to meet in executive session to discuss the sale of real property. 2007 OK AG 32.

A public body may meet with its attorney concerning an investigation, claim, or action if disclosure of the information would seriously impair the public body's ability to process the claim or conduct an investigation, litigation or proceeding in the public interest. 25 O.S. § 307.B.4. *See* 2009 OK AG 29 ("A "pending" claim can refer to litigation or an administrative action which either presently exists or is merely potential or anticipated.")

A board of education may close a hearing discussing the expulsion or suspension of a student when a closing is requested by the student, his parents, attorney or legal guardian. The board may also discuss negotiations concerning employees and representative employee groups and the purchase or appraisal of real property. 25 O.S. § 307.B.5.

Public bodies may discuss matters involving a specific handicapped child. 25 O.S. § 307.B.6.

Public bodies may discuss matters where disclosure of information would violate confidentiality requirements of state or federal law. 25 O.S. § 307.B.7.

Public bodies may engage in deliberations or render a final or intermediate decision in an individual proceeding pursuant to Article II of the Oklahoma Administrative Procedures Act. 25 O.S. § 307.B.8.

A public body may hold executive sessions to discuss investigations into plans, schemes or acts of terrorism, assessments of vulnerability of government facilities to acts of terrorism and/or discussion of plans to prevent or respond to acts of terrorism. 25 O.S. § 307.B.9.

The State Banking Board may hold executive sessions to grant an emergency certificate of authority or a certificate to maintain a branch to a state bank assuming deposit liability of another bank. 25 O.S. § 307.C.1.

The Oklahoma Industrial Finance Authority may hold executive sessions when the matter to be discussed involves trade secrets. 25 O.S. § 307.C.2.

The Oklahoma Development and Finance Authority may hold executive sessions when the matter to be discussed concerns trade secrets. 25 O.S. § 307.C.3.

The Oklahoma Center for the Advancement of Science and Technology may hold executive sessions when the item to be discussed concerns trade secrets. 25 O.S. § 307.C.4.

The Oklahoma Savings and Loan Board may hold an executive session for the purpose of involuntary liquidation of a state-chartered savings and loan association upon the recommendation of the federal savings and loan corporation. 25 O.S. § 307.C.5.

The Oklahoma Health Research Committee may hold executive sessions to discuss matters pertaining to research and development of products, if public disclosure would interfere with the development of patents, copyrights, products or services. 25 O.S. § 307.C.6.

A review committee created under the Local Development Act may hold closed sessions. 25 O.S. § 307.C.7.

The Child Death Review Board may close sessions for purposes of receiving and conferring on matters relative to materials declared confidential by law. 25 O.S. § 307.C.8.

The Domestic Violence Fatality Review Board may meet in executive session to discuss individual cases of a domestic violence death. 25 O.S. § 307.C.9.

Nonprofit entities supported in whole or in part by public funds or entrusted with the expenditure of public funds for purposes pertaining to economic development may close sessions if public disclosure would interfere with development of business or violate confidentiality of the business. 25 O.S. § 307.C.10.

Oklahoma Indigent Defense System Board for purposes of strategies when negotiating contracts to provide legal representation to criminal defendants and indigent juveniles. 25 O.S. § 307.C.11.

The Oklahoma Investment Committee for purposes of discussing application and confidential materials pursuant to terms of the Oklahoma Quality Investment Act. 25 O.S. § 307.C.12

#### **B. Any other statutory requirements for closed or open meetings.**

The Act specifically states that no public body “shall hold executive sessions unless otherwise specifically provided in this section.” 25 O.S. § 307. This language is reinforced by the legislative mandate that if an executive session is proposed, the agenda shall “state specifically the provision of Section 307 of this title authorizing the executive session.” 25 O.S. § 311.12.B.2.C. The Act does not contain any other provision which would provide a “catch-all” exemption allowing a closure of meetings as provided by law.

#### **C. Court mandated opening, closing.**

There have been no cases where a court has mandated a meeting be opened or closed.

### **III. MEETING CATEGORIES -- OPEN OR CLOSED.**

#### **A. Adjudications by administrative bodies.**

##### **1. Deliberations closed, but not fact-finding.**

The Administrative Procedures Act provides “for open meetings up to the point the decision making is reached.” The final decision, being a quasi-judicial action, is not required to be reached in an open meeting. *Stillwater Sav. & Loan Ass’n v. Oklahoma Sav. & Loan Board*, 1975 OK 50, 534 P.2d 9.

##### **2. Only certain adjudications closed, i.e. under certain statutes.**

Only certain adjudications are closed (i.e. under certain statutes). The Corporation Commission when sitting in its judicial capacity as granted by the Oklahoma Constitution is not subject to Open Meeting Act requirements. *Monson v. State, ex rel. Oklahoma Corp. Comm’n*, 1983 OK 115, 673 P.2d 839. Further, the legislature has directed in the event that executive sessions may be held for engaging in deliberations or rendering a final or intermediate decision in an individual proceeding under the Administrative Procedures Act. 25 O.S. § 307.B.8.

#### **B. Budget sessions.**

There are no exemptions for budget sessions.

#### **C. Business and industry relations.**

The Oklahoma Industrial Finance Authority, Oklahoma Development Finance Authority, and the Oklahoma Center for Advancement of Science and Technology, all designed in part to promote economic development, may meet in executive session after discussing matters which might be deemed trade secrets or proprietary information. 25 O.S. § 307.C.2-4. The exclusion of competitors for a state contract from a meeting of the State Board of Corrections violates the Open Meeting Act 1979 OK AG 70.

#### **D. Federal programs.**

Local boards which are supported by federal funds and/or receiving in-kind services at local taxpayer expense are covered under the Act. 1971 OK AG 245. However, such meetings may be closed where disclosure of information would violate confidentiality requirements of federal law. 25 O.S. § 307.B.7.

#### **E. Financial data of public bodies.**

i. Open Meeting Act applies to meetings of the board of directors of a nonprofit corporation, where such corporation has contracted with a city and a public trust for the operation, maintenance and improvement of public property, and where the city makes annual appropriations to the public trust to pay to the corporation as an operating fee, where such meetings are held for the purpose of discussing business concerning such matters. 1980 OK AG 215.

ii. Public trusts organized under 60 O.S. §§ 176 *et seq.* are “public bodies” within the meaning of the Open Meeting Act, and such public trusts must comply with and are subject to the Open Meeting Act. 1981 OK AG 109.

iii. Open Meeting Act applies to meetings of the board of directors of a nonprofit corporation, where such corporation has contracted with a city for the operation, maintenance and improvements of a municipal park and the city makes annual appropriations to the corporation as an operating fee, where such meetings are held for the purpose of discussing business concerning such matters. 1981 OK AG 139.

iv. Open Meeting Act applies to meetings of the officers of a nonprofit corporation operating public property under contract with a municipality, where matters to be discussed or taken up concern

the administration of the contract or the operation, improvement or maintenance of such public property. 1981 OK AG 184.

**F. Financial data, trade secrets or proprietary data of private corporations and individuals.**

i. The Oklahoma Industrial Finance Authority may hold executive sessions when the matter to be discussed involves trade secrets. 25 O.S. § 307.C.2.

ii. The Oklahoma Development Finance Authority may hold executive session, when the matter to be discussed concerns trade secrets. 25 O.S. § 307.C.3.

iii. The Oklahoma Center for the Advancement of Science and Technology may hold executive sessions when the item to be discussed concerns trade secrets. 25 O.S. § 307.C.4.

iv. The Oklahoma Health Research Committee may hold executive sessions to discuss matters pertaining to research and development of products, if public disclosure would interfere with the development of patents, copyrights, products or services. 25 O.S. § 307.C.6.

**G. Gifts, trusts and honorary degrees.**

Public trusts must comply with the act. 1981 OK AG 109.

**H. Grand jury testimony by public employees.**

This issue has not been addressed under the act. However, it is a criminal offense for a person involved in the process to disclose evidence presented to a grand jury and how a grand jury may have voted. 21 O.S. § 583. It is also a criminal offense for anyone to record or listen to a grand jury's deliberations or voting. 21 O.S. § 588.

**I. Licensing examinations.**

The State Board of Examiners of Psychologists could not hold a closed meeting to determine the qualifications of applicants to be examined and licensed. 1976 OK AG 242.

**J. Litigation; pending litigation or other attorney-client privileges.**

A public body may have confidential meetings with its attorney to discuss "a pending investigation, claim or action" when disclosure would seriously impair the proceeding, but any vote to file suit must be cast in public. *Oklahoma Ass'n of Municipal Attorneys v. State, ex rel. Derryberry*, 1978 OK 59, 577 P.2d 1310; *Berry v. Board of Governors of Registered Dentists*, 1980 OK 45, 611 P.2d 628; 25 O.S. § 307. A "pending" claim can refer to litigation or an administrative action while either exists or is merely potential or anticipated. 2005 OK AG 29.

**K. Negotiations and collective bargaining of public employees.**

Executive sessions are authorized to discuss negotiations concerning employees and representatives of employee groups. 25 O.S. § 307.B.3. As to the actual negotiations, if the negotiating entity has actual or *de facto* decision-making authority on behalf of the public body, then the negotiations must be open to the public. *International Ass'n of Firefighters, supra* (negotiations between union and city manager not covered under act because city manager lacked authority to bind city commission).

**1. Any sessions regarding collective bargaining.**

As to the actual negotiations, if the negotiating entity has actual or *de facto* decision-making authority on behalf of the public body, then the negotiations must be open to the public. *International Ass'n of Firefighters, supra* (negotiations between union and city manager not covered under act because city manager lacked authority to bind city commission).

**2. Only those between the public employees and the public body.**

As to the actual negotiations, if the negotiating entity has actual or *de facto* decision-making authority on behalf of the public body,

then the negotiations must be open to the public. *International Ass'n of Firefighters, supra* (negotiations between union and city manager not covered under act because city manager lacked authority to bind city commission).

**L. Parole board meetings, or meetings involving parole board decisions.**

The Board of Corrections is covered by the act as matter of law because of its statutory origin. *Sanders v. Benton*, 1978 OK 53, 579 P.2d 815. Procedure of Pardon and Parole board members to cast their votes by mail contravenes the act. 1980 OK AG 144.

**M. Patients; discussions on individual patients.**

There has been no case law on this issue.

**N. Personnel matters.**

The Open Meeting Act provides that an executive session may be held to discuss "employment, hiring, appointment, promotion, demotion, disciplining, or resignation of any individual salaried public officer or employee". 25 O.S. § 307.B.1. Contemporaneous with the 1978 amendment of the Open Meetings Act, the attorney general issued an opinion stating that going into executive session to discuss salaries of individual public officers or employees was not allowed under the act. 1978 OK AG 201. In 1996, the attorney general, in response to an inquiry concerning whether a public body could go into executive session to discuss salaries, issued an opinion withdrawing the 1978 opinion and stating that executive sessions could be called for the sole purpose of discussing salaries because salaries were included in the word "employment". 1996 OK AG 40. The opinion expanded even further on the definition of "employment" "to include continued employment and conditions of employment such as place of employment, salary, duties to be performed and evaluations." This opinion was subsequently adopted by the Oklahoma courts. *See Isch, supra*.

**1. Interviews for public employment.**

Governing bodies may go into executive session to discuss hiring of public officers or employees. 25 O.S. § 307 .B.1. A public body may not go into executive session to discuss awarding a contract for professional services unless the recipient will be an independent contractor, rather than a public officer or employee of the public body. 2005 OK AG 29.

**2. Disciplinary matters, performance or ethics of public employees.**

a. Public bodies may discuss appointments, hiring, employment, promotion, demotion, disciplining or resignation of a salaried public official or employee in a closed meeting. 25 O.S. § 307.B.1.

b. The Oklahoma State Board of Medical Examiners may hold more than the minimum of two meetings per year to consider disciplinary hearings if the notice requirements of 59 O.S. § 488 and the Open Meeting Law are met. 1977 OK AG 251.

c. The Oklahoma State Board of Public Accountancy is required to deliberate openly following a hearing on a complaint brought against a registrant for disciplinary action. The State Board of Public Accountancy may not confer in executive session with its attorney on legal issues raised during the conduct of an open hearing on disciplinary complaint. 1979 OK AG 32.

d. "Job Content Evaluation Committees" created under 62 O.S. §§ 7.9 *et seq.* are "public bodies" within the meaning of the Open Meeting Act. 1981 OK AG 214.

e. "Council on Judicial Complaints" created under 20 O.S. §§ 1658 *et seq.* is covered under the act except when "conducting, discussing or deliberating any matters relating to a complaint received or filed with the Council." 25 O.S. § 304.1. The statute attempted to impose penalties against any complainant, witness or judge for disclosing any information about the complaint or testimony given in the proceed-

ings but the Attorney General ruled such restrictions were unconstitutional. 2000 OK AG 15.

### 3. Dismissal; considering dismissal of public employees.

Governing bodies may go into closed session to discuss dismissal of an employee. 1968 OK AG 231. However, a public body may not dismiss an employee on a vote taken outside the public meeting or within an executive session. 1981 OK AG 69.

#### O. Real estate negotiations.

Public bodies may discuss the purchase or appraisal of real property. 25 O.S. § 307.B.3. An executive session is limited to the members of the public body, its attorney and staff. No landowner, broker, developer or any other person who may profit directly or indirectly from the proposed transaction may be present or participate in the executive session. 25 O.S. § 307.D.

#### P. Security, national and/or state, of buildings, personnel or other.

A public body may hold executive sessions to discuss investigations into plans, schemes or acts of terrorism, assessments of vulnerability of government facilities to acts of terrorism and/or discussion of plans to prevent or respond to acts of terrorism. 25 O.S. § 307.B.9.

#### Q. Students; discussions on individual students.

Governing boards of state operated institutions of higher education may not hold executive sessions to hear evidence and discuss student disciplinary matters which may come before it. 1981 OK AG 135.

## IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

### A. When to challenge.

#### 1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

The act does not provide for an expedited procedure to challenge a refusal to attend a future meeting. The two available means of relief would be to seek an injunction in District Court or to seek a writ of mandamus from the State Supreme Court.

#### 2. When barred from attending.

The act does not provide an expedited procedure. It does, however, allow for the actions taken in violation of the act to be declared null and void. *In re Appeal of the Order Declaring Annexation Dated June 29, 1978, supra* (court invalidated action of board taken in violation of Open Meeting Act).

#### 3. To set aside decision.

*In re Appeal of the Order Declaring Annexation Dated June 29, 1978, supra* (court invalidated action of board taken in violation of Open Meeting Act); *Wilson v. City of Tecumseh*, 2008 OK CIV APP 84, 194 P.3d 140 (Appeal Court upheld trial court declaration that vote to pay City Manager bonus was null and void because not properly noticed on agenda); *Okmulgee County Rural Water Dist. No. 2 v. Beggs Public Works*, 2009 OK CIV APP 51, 211 P.3d 225 (Water contract declared invalid because approved by the Public Works Authority without being properly noticed on agenda).

#### 4. For ruling on future meetings.

If a person is able to have the appropriate government agency or official to make the request, an Attorney General ruling could be obtained on the legality of a meeting of a public body. *See* 74 O.S. § 18b(e). If a controversy exists and is continuing, then declaratory relief could be available. *See* 12 O.S. §§ 1651 *et seq.*

#### 5. Other.

While it is a long process, the citizen may lead a petition drive to convene a grand jury to investigate denial of access. Okla. Const. Art. 2, § 18.

### B. How to start.

#### 1. Where to ask for ruling.

##### a. Administrative forum.

##### (1). Agency procedure for challenge.

While it is not advisable to follow the Administrative Procedures Act because it not only is not necessary but it would also be too cumbersome, if a challenge were made through the APA it would first be made with the agency. After an order has been entered denying the access, that order would be appealable to the District Court. This is an unnecessary step because an action can be maintained in District Court alleging violation of the Open Meeting Act and seeking an injunction.

##### (2). Commission or independent agency.

These commissions and agencies are covered under the Open Meeting Act and thus an action should be commenced directly through district court.

##### b. State attorney general.

The Attorney General may issue advisory opinions upon questions of law submitted by certain state officials. 74 O.S. §§ 18b.(d) and (e). The public officer with notice of the ruling is bound by it until relieved of the ruling by a court of competent jurisdiction. *Pan American Petroleum Corp. v. Board of Tax-Rolle Corp.*, 1973 OK 52, 510 P.2d 680.

##### c. Court.

*International Ass'n of Firefighters, supra* (writ of mandamus).

#### 2. Applicable time limits.

The Open Meeting Act does not contain any time limits for challenging an unlawful act by a public body.

#### 3. Contents of request for ruling.

There are no guidelines for requesting access. If such a request is made, then it should contain a description of the meeting a person seeks to attend and the reasons why that meeting should be open.

#### 4. How long should you wait for a response?

The Act does not address this. But if one anticipates being excluded from a hearing, then the response time should be short to allow time to file an action in district court.

#### 5. Are subsequent or concurrent measures (formal or informal) available?

If possible to do in advance, it is always advisable to request access to a meeting to which one has reason to believe he will be excluded. Once denial is given, then the person can proceed to district court.

### C. Court review of administrative decision.

#### 1. Who may sue?

Any person may bring an original action arising from a violation of the act.

#### 2. Will the court give priority to the pleading?

There is no particular provision allowing for an expedited proceeding.

#### 3. Pro se possibility, advisability.

It is possible to proceed *pro se* if one has a grasp of the wording in the Act, *i.e.* what is a public body, what is a meeting, etc. With a little knowledge, a petition could be drafted. However, the act does not specifically provide for civil relief. Therefore, the petition must be drafted to seek either injunctive or declarative relief in district court, or possibly a writ in the State Supreme Court. It would be advisable

to engage legal help in pursuing such a course to ensure that the procedural guidelines are followed. Otherwise, the action could be dismissed without ever reaching the substantive issue.

#### 4. What issues will the court address?

##### a. Open the meeting.

No cases have been reported concerning the opening of a meeting.

##### b. Invalidate the decision.

*Hayworth, supra* (board hiring of superintendent invalidated because not listed on agenda); *Order Declaring Annexation, supra* (vote on annexation invalidated because vote not called in compliance with act). However, the court upheld city's hiring of an employee during a meeting which violated the act when the employee's contract was not approved until a later meeting held in compliance with the act. *City of Bixby v. State ex rel. Dep't of Labor*; 1996 OK CIV APP 118, 934 P.2d 364. A vote taken on an item not listed on the agenda for the public meeting is a willful violation of the Act and is invalid. 2000 OK AG 7.

##### c. Order future meetings open.

Oklahoma law does not address this issue.

#### 5. Pleading format.

There is no specific civil relief provided in the Act. To plead a cause of action, the petition should contain a statement showing that defendant is a public body, the wrongful action was part of the public meeting process, and the specific wrongful action alleged, *i.e.* not an agenda, failure to give notice, inadequacy of notice, unauthorized executive session, etc. Any action taken in willful violation of the Open Meeting Act "shall be invalid." 25 O.S. § 313. Willful is defined "to include any act or omission which has the effect of actually deceiving or misleading the public regarding the scope of matters to be taken up at the meeting. This would also include agency action which exceeds the scope of action defined by the notice." 2000 OK AG 07.

#### 6. Time limit for filing suit.

There is no time limit specified by statute. Thus, the only applicable limit would be the statutory two-year limit for non-specifically enumerated torts. 12 O.S. § 95.

#### 7. What court.

The action should be commenced in district court. However, compare *Oklahoma Ass'n of Municipal Attorneys v. Derryberry, supra*. (original action for declaratory relief concerning Attorney General opinion regarding Open Meeting Act filed in Oklahoma Supreme Court).

#### 8. Judicial remedies available.

12 O.S. § 1651 (declaratory relief); 12 O.S. § 1451 (mandamus); 12 O.S. § 1381 (injunction).

#### 9. Availability of court costs and attorneys' fees.

There is no provision within the act for awarding attorney's fees. Thus, costs and attorney's fees would have to be awarded at the discretion of the Court. *See* 12 O.S. § 927.

#### 10. Fines.

Upon conviction in a misdemeanor action, a public official may be fined up to \$500. *See Hillary, supra*.

#### 11. Other penalties.

Upon conviction of a misdemeanor, a public official may be imprisoned up to one year in the county jail. *See Hillary, supra*.

#### D. Appealing initial court decisions.

##### 1. Appeal routes.

All final orders are appealed to the Oklahoma Supreme Court. 12 O.S. § 952. The Supreme Court may reassign the case to the Court of Appeals.

##### 2. Time limits for filing appeals.

Petition in error must be filed within thirty (30) days from final judgment or order. 12 O.S. Ch. 15, App. 2, Rule 1.15(a).

##### 3. Contact of interested amici.

*Amicus* briefs may be filed by consent of the parties or by leave of the Chief Justice of the Supreme Court. The *amicus curiae* must file a statement not exceeding five pages disclosing the nature of the interest, the factual or legal questions which are not adequately addressed by the litigants and the relevancy of the factual or legal questions to the disposition of the case. Upon showing of extraordinary circumstances, the *amicus curiae* may be allowed to participate in oral arguments. 12 O.S. Ch. 15, App. 2, Rule 1.28a.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

#### V. ASSERTING A RIGHT TO COMMENT.

##### A. Is there a right to participate in public meetings?

Neither the Open Meeting Act nor "the First Amendment to the United States Constitution provides an opportunity for citizens to express their views on issues being considered by a public body, but a public body may voluntarily choose to allow for such comments." 2002 OK AG 26. *See also* 1998 OK AG 45; 2004 OK AG 44.

##### B. Must a commenter give notice of intentions to comment?

There are no specific rules on this issue. However, once a public body voluntarily establishes an open forum, it may establish the conditions and restrictions on such speech subject to reasonable time, place and manner restrictions. 1998 OK AG 45.

##### C. Can a public body limit comment?

When a public body voluntarily establishes an open forum, then any content-based restriction must be narrowly drawn to effectuate a compelling governmental interest, applying principles contained in the First Amendment to the United States Constitution. 1998 OK AG 45. A public body may, however, limit public comment to items listed on the agenda. If no limits are placed on the subject matter of public comment, then an agenda item for "public comments" is sufficient notice that citizens may speak on any issue. 2002 OK AG 26.

##### D. How can a participant assert rights to comment?

When a public body establishes an open forum for its citizens, the public body may establish any reasonable time, place and manner restrictions. 1998 OK AG 45.

##### E. Are there sanctions for unapproved comment?

This issue was not addressed in the attorney general opinion. However, a public body cannot allow comment on items not listed on the agenda if the agenda states the public comments are limited to agenda items. 2002 OK AG 26.

## Statute

### Open Records

#### *Oklahoma Open Records Act*

#### *51 Okla. Stat. §§ 24A.1 et seq.*

#### *§ 24A.1. Short title*

Section 24A.1 et seq. of this title shall be known and may be cited as the “Oklahoma Open Records Act”.

#### *§ 24A.2. Public policy—Purpose of act*

As the Oklahoma Constitution recognizes and guarantees, all political power is inherent in the people. Thus, it 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 Oklahoma Open Records Act shall not create, directly or indirectly, any rights of privacy or any remedies for violation of any rights of privacy; nor shall the Oklahoma Open Records Act, except as specifically set forth in the Oklahoma Open Records Act, establish any procedures for protecting any person from release of information contained in public records. The purpose of this act is to ensure and facilitate the public’s right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power. The privacy interests of individuals are adequately protected in the specific exceptions to the Oklahoma Open Records Act or in the statutes which authorize, create or require the records. Except where specific state or federal statutes create a confidential privilege, persons who submit information to public bodies have no right to keep this information from public access nor reasonable expectation that this information will be kept from public access; provided, the person, agency or political subdivision shall at all times bear the burden of establishing such records are protected by such a confidential privilege. Except as may be required by other statutes, public bodies do not need to follow any procedures for providing access to public records except those specifically required by the Oklahoma Open Records Act.

#### *§ 24A.3. Definitions*

As used in this act:

1. “Record” means all documents, including, but not limited to, 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 the authority of, or coming into the 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” does not mean:

- a. computer software,
- b. nongovernment personal effects,
- c. unless public disclosure is required by other laws or regulations, vehicle movement records of the Oklahoma Transportation Authority obtained in connection with the Authority’s electronic toll collection system,
- d. personal financial information, credit reports or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, permit, or for the purpose of becoming qualified to contract with a public body,
- e. any digital audio/video recordings of the toll collection and safeguarding activities of the Oklahoma Transportation Authority,
- f. any personal information provided by a guest at any facility owned or operated by the Oklahoma Tourism and Recreation Department or the Board of Trustees of the Quartz Mountain Arts and Conference Center and Nature Park to obtain any service at the facility or by a purchaser of a product sold by or through the Oklahoma Tourism and Recreation Department or the Quartz Mountain Arts and Conference Center and Nature Park,
- g. a Department of Defense Form 214 (DD Form 214) filed with a county clerk, including any DD Form 214 filed before the effective date of this

act, or

h. except as provided for in Section 2-110 of Title 47 of the Oklahoma Statutes,

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

(2) personal information within driver records, as defined by the Driver’s Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, which are stored and maintained by the Department of Public Safety, or

(3) audio or video recordings of the Department of Public Safety;

2. “Public body” shall include, but not be limited to, any office, department, board, bureau, commission, agency, trusteeship, authority, council, committee, trust or any entity created by a trust, county, city, village, town, township, district, school district, fair board, court, executive office, advisory group, task force, study group, or any subdivision thereof, supported in whole or in part by public funds or entrusted with the expenditure of public funds or administering or operating public property, and all committees, or subcommittees thereof. Except for the records required by Section 24A.4 of this title, “public body” does not mean judges, justices, the Council on Judicial Complaints, the Legislature, or legislators;

3. “Public office” means the physical location where public bodies conduct business or keep records;

4. “Public official” means any official or employee of any public body as defined herein; and

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

#### *§ 24A.4. Record of receipts and expenditures*

In addition to other records which are kept or maintained, every public body and public official has a specific duty to keep and maintain complete records of the receipt and expenditure of any public funds reflecting all financial and business transactions relating thereto, except that such records may be disposed of as provided by law.

#### *§ 24A.5. Inspection, copying and/or mechanical reproduction of records—Exemptions*

All records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours; provided:

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

- a. records protected by a state evidentiary privilege such as the attorney-client privilege, the work product immunity from discovery and the identity of informer privileges,
- b. records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes,
- c. personal information within driver records as defined by the Driver’s Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, or
- d. information in the files of the Board of Medicolegal Investigations obtained pursuant to Sections 940 and 941 of Title 63 of the Oklahoma Statutes that may be hearsay, preliminary unsubstantiated investigation-related findings, or confidential medical information.

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

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

3. Any request for a record which contains individual records of persons, and the cost of copying, reproducing or certifying each individual record is otherwise prescribed by state law, the cost may be assessed for each individual record, or portion thereof requested as prescribed by state law. Otherwise, a public body may charge a fee only for recovery of the reasonable, direct costs of record copying, or mechanical reproduction. Notwithstanding any state or local provision to the contrary, in no instance shall the record copying fee exceed twenty-five cents (\$0.25) per page for records having the dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One Dollar (\$1.00) per copied page for a certified copy. However, if the request:

a. is solely for commercial purpose, or

b. would clearly cause excessive disruption of the essential functions of the public body,

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

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

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

The fees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information.

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

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

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

*§ 24A.6. Public body maintaining less than 30 hours of regular business per week—Inspection, copying or mechanical reproduction of records*

A. If a public body or its office does not have regular business hours of at least thirty (30) hours a week, the public body shall post and maintain a written notice at its principal office and with the county clerk where the public body is located which notice shall:

1. Designate the days of the week when records are available for inspection, copying or mechanical reproduction;

2. Set forth the name, mailing address, and telephone number of the individual in charge of the records; and

3. Describe in detail the procedures for obtaining access to the records at least two days of the week, excluding Sunday.

B. The person requesting the record and the person authorized to release the records of the public body may agree to inspection, copying, or mechanical reproduction on a day and at a time other than that designated in the notice.

*§ 24A.7. Personnel records—Confidentiality—Inspection and copying*

A. A public body may keep personnel records confidential:

1. Which relate to internal personnel investigations including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline, or resignation; or

2. Where disclosure would constitute a clearly unwarranted invasion of personal privacy such as employee evaluations, payroll deductions, employment applications submitted by persons not hired by the public body, and transcripts from institutions of higher education maintained in the personnel files of certified public school employees; provided, however, that nothing in this subsection shall be construed to exempt from disclosure the degree obtained and the curriculum on the transcripts of certified public school employees.

B. All personnel records not specifically falling within the exceptions provided in subsection A of this section shall be available for public inspection and copying including, but not limited to, records of:

1. An employment application of a person who becomes a public official;

2. The gross receipts of public funds;

3. The dates of employment, title or position; and

4. Any final disciplinary action resulting in loss of pay, suspension, demotion of position, or termination.

C. Except as may otherwise be made confidential by statute, an employee of a public body shall have a right of access to his own personnel file.

D. Public bodies shall keep confidential the home address, telephone numbers and social security numbers of any person employed or formerly employed by the public body.

*§ 24A.8. Law enforcement records—Disclosure*

A. Law enforcement agencies shall make available for public inspection, if kept, the following records:

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

2. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer;

3. A chronological list of incidents pertaining to the arrest, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred; and

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 an agency summary of crimes reported and public calls for service by classification or nature and number; and

8. Jail registers, including jail blotter data or jail booking information recorded on persons at the time of incarceration showing the name of each prisoner with the date and cause of commitment, the authority committing the prisoner, whether committed for a criminal offense, a description of the prisoner, and the date or manner of discharge or escape of the prisoner.

B. Except for the records listed in subsections A of this section and those made open by other state or local laws, law enforcement agencies may deny access to law enforcement records except where a court finds that the public interest or the interest of an individual outweighs the reason for denial.

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

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

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

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

F. The Department of Public Safety shall keep confidential:

1. All records it maintains pursuant to its authority under Title 47 of the Oklahoma Statutes relating to the Oklahoma Highway Patrol Division, the Communications Division, and other divisions of the Department relating to:
  - a. training, lesson plans, teaching materials, tests, and test results,
  - b. policies, procedures, and operations, any of which are of a tactical nature, and
  - c. the following information from radio logs:
    - (1) telephone numbers,
    - (2) addresses other than the location of incidents to which officers are dispatched, and
    - (3) personal information which is contrary to the provisions of the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725; and
2. For the purpose of preventing identity theft and invasion of law enforcement computer systems, except as provided in Title 47 of the Oklahoma Statutes, all driving records.

*§ 24A.9. Personal notes and personally created material—Confidentiality*

Prior to taking action, including making a recommendation or issuing a report, a public official may keep confidential his or her personal notes and personally created materials other than departmental budget requests of a public body prepared as an aid to memory or research leading to the adoption of a public policy or the implementation of a public project.

*§ 24A.10. Voluntarily supplied information—Bids, computer programs, appraisals and prospective business locations—Department of Commerce records—Confidentiality—Disclosure*

A. Any information, records or other material heretofore voluntarily supplied to any state agency, board or commission which was not required to be considered by that agency, board or commission in the performance of its duties may, within thirty (30) days from June 6, 1988, be removed from the files of such agency, board or commission by the person or entity which originally voluntarily supplied such information. Provided, after thirty (30) days from the effective date of this act, any information voluntarily supplied shall be subject to full disclosure pursuant to this act.

B. If disclosure would give an unfair advantage to competitors or bidders, a public body may keep confidential records relating to:

1. Bid specifications for competitive bidding prior to publication by the public body; or
  2. Contents of sealed bids prior to the opening of bids by a public body;
- or

3. Computer programs or software but not data thereon; or

4. Appraisals relating to the sale or acquisition of real estate by a public body prior to award of a contract; or

5. The 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.

C. Except as set forth hereafter, the Oklahoma Department of Commerce, the Oklahoma Department of Career and Technology Education, the technology center school districts, and the Oklahoma Film and Music Office may keep confidential:

1. Business plans, feasibility studies, financing proposals, marketing plans, financial statements or trade secrets submitted by a person or entity seeking economic advice, business development or customized training from such Departments or school districts;
2. Proprietary information of the business submitted to the Department or school districts for the purpose of business development or customized training, and related confidentiality agreements detailing the information or records designated as confidential; and
3. Information compiled by such Departments or school districts in response to those submissions.

The Oklahoma Department of Commerce, the Oklahoma Department of Career and Technology Education, the technology center school districts, and the Oklahoma Film and Music Office may not keep confidential that submitted information when and to the extent the person or entity submitting the information consents to disclosure.

D. Although they must provide public access to their records, including records of the name, address, rate paid for services, charges, and payment for each customer, public bodies that provide utility services to the public may keep confidential credit information, credit card numbers, telephone numbers, and bank account information for individual customers, and utility supply and utility equipment supply contracts for any industrial customer with a connected electric load in excess of two thousand five hundred (2,500) kilowatts if public access to such contracts would give an unfair advantage to competitors of the customer; provided that, where a public body performs billing or collection services for a utility regulated by the Corporation Commission pursuant to a contractual agreement, any customer or individual payment data obtained or created by the public body in performance of the agreement shall not be a record for purposes of this act.

*§ 24A.10a. Oklahoma Medical Center—Market research and marketing plans—Confidentiality*

The Oklahoma Medical Center may keep confidential market research conducted by and marketing plans developed by the Oklahoma Medical Center if the Center determines that disclosure of such research or plans would give an unfair advantage to competitors of the Oklahoma Medical Center regarding marketing research and planning, public education, and advertising and promotion of special and general services provided by the Oklahoma Medical Center.

*§ 24A.11. Library, archive or museum materials—Confidentiality*

A. A public body may keep confidential library, archive, or museum materials donated to the public body to the extent of any limitations imposed as a condition of the donation and any information which would reveal the identity of an individual who lawfully makes a donation to or on behalf of a public body including, but not limited to, donations made through a foundation operated in compliance with Sections 5-145 and 4306 of Title 70 of the Oklahoma Statutes.

B. If library, archive, or museum materials are donated to a public body and the donation may be claimed as a tax deduction, the public body may keep confidential any information required as a condition of the donation except the date of the donation, the appraised value claimed for the donation, and a general description of the materials donated and their quantity.

§ 24A.12. *Litigation files and investigatory files of Attorney General, district or municipal attorney—Confidentiality*

Except as otherwise provided by state or local law, the Attorney General of the State of Oklahoma and agency attorneys authorized by law, the office of the district attorney of any county of the state, and the office of the municipal attorney of any municipality may keep its litigation files and investigatory reports confidential.

§ 24A.13. *Federal records—Confidentiality*

Records coming into the possession of a public body from the federal government or records generated or gathered as a result of federal legislation may be kept confidential to the extent required by federal law.

§ 24A.14. *Personal communications relating to exercise of constitutional rights—Confidentiality*

Except for the fact that a communication has been received and that it is or is not a complaint, a public official may keep confidential personal communications received by the public official from a person exercising rights secured by the Constitution of the State of Oklahoma or the Constitution of the United States. The public official's written response to this personal communication may be kept confidential only to the extent necessary to protect the identity of the person exercising the right.

§ 24A.15. *Crop and livestock reports—Public warehouse financial statements—Confidentiality*

A. The Division of Agricultural Statistics, Oklahoma Department of Agriculture, also known as the Oklahoma Crop and Livestock Reporting Service, may keep confidential crop and livestock reports provided by farmers, ranchers, and agri-businesses to the extent the reports individually identify the providers.

B. The State Board of Agriculture is authorized to provide for the confidentiality of any financial statement filed pursuant to Section 9-22 of Title 2 of the Oklahoma Statutes. Copies of such financial statements may only be obtained upon written request to the Commissioner of Agriculture.

Upon good cause shown, and at the discretion of the Commissioner of Agriculture, such financial statements may be released.

§ 24A.16. *Educational records and materials—Confidentiality*

A. Except as set forth in subsection B of this section, public educational institutions and their employees may keep confidential:

1. Individual student records;
2. Teacher lesson plans, tests and other teaching material; and
3. Personal communications concerning individual students.

B. If kept, statistical information not identified with a particular student and directory information shall be open for inspection and copying. "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, and the most recent previous educational institution attended by the student. Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as directory information with respect to each student attending the institution or agency and shall allow a reasonable period of time after the notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without prior consent of the parent or guardian or the student if the student is eighteen (18) years of age or older.

C. A public school district may release individual student records for the current or previous school year to a school district at which the student was previously enrolled for purposes of evaluating educational programs and school effectiveness.

§ 24A.16a. *Higher Education—Donor Information*

Institutions or agencies of The Oklahoma State System of Higher

Education may keep confidential all information pertaining to donors and prospective donors to or for the benefit of the institutions or agencies.

§ 24A.17. *Violations—Penalties—Civil liability*

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

B. Any person denied access to records of a public body or public official:

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

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

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

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

§ 24A.18. *Additional recordkeeping not required*

Except as may be required in Section 24A.4 of this title, this act does not impose any additional recordkeeping requirements on public bodies or public officials.

§ 24A.19. *Research records—Confidentiality*

In addition to other records that a public body may keep confidential pursuant to the provisions of the Oklahoma Open Records Act, a public body may keep confidential:

1. Any information related to research, the disclosure of which could affect the conduct or outcome of the research, the ability to patent or copyright the research, or any other proprietary rights any entity may have in the research or the results of the research including, but not limited to, trade secrets and commercial or financial information obtained from an entity financing or cooperating in the research, research protocols, and research notes, data, results, or other writings about the research; and

2. The specific terms and conditions of any license or other commercialization agreement relating to state owned or controlled technology or the development, transfer, or commercialization of the technology. Any other information relating to state owned or controlled technology or the development, transfer, or commercialization of the technology which, if disclosed, will adversely affect or give other persons or entities an advantage over public bodies in negotiating terms and conditions for the development, transfer, or commercialization of the technology. However, institutions within The Oklahoma State System of Higher Education shall:

a. report to the Oklahoma State Regents for Higher Education as requested, on forms provided by the Regents, research activities funded by external entities or the institutions, the results of which have generated new intellectual property, and

b. report to the Oklahoma State Regents for Higher Education annually on forms provided:

(1) expenditures for research and development supported by the institution,

(2) any financial relationships between the institution and private business entities,

(3) any acquisition of an equity interest by the institution in a private business,

(4) the receipt of royalty or other income related to the sale of products, processes, or ideas by the institution or a private business entity with which the institution has established a financial arrangement,

(5) the gains or losses upon the sale or other disposition of equity interests in private business entities, and

(6) any other information regarding technology transfer required by the Oklahoma State Regents for Higher Education.

The reports required in subparagraphs a and b of this paragraph shall not be deemed confidential and shall be subject to full disclosure pursuant to the Oklahoma Open Records Act.

*§ 24A.20. Records in litigation or investigation file—Access*

Access to records which, under the Oklahoma Open Records Act, would otherwise be available for public inspection and copying, shall not be denied because a public body or public official is using or has taken possession of such records for investigatory purposes or has placed the records in a litigation or investigation file. However, a law enforcement agency may deny access to a copy of such a record in an investigative file if the record or a true and complete copy thereof is available for public inspection and copying at another public body.

*§ 24A.21. Increment district reports—Exemption from copying fees*

The fees that may be charged by a public body pursuant to the provisions of paragraph 3 of Section 24A.5 of Title 51 of the Oklahoma Statutes shall not be charged when a state agency or taxing entity located within the boundaries of any district created pursuant to the provisions of the Local Development Act request a copy of the reports required by subsections A and B of Section 18 of this act.

*§ 24A.22. Public utilities—Confidential books, records and trade secrets*

A. The Corporation Commission shall keep confidential those records of a public utility, its affiliates, suppliers and customers which the Commission determines are confidential books and records or trade secrets.

B. As used in this section, “public utility” means any entity regulated by the Corporation Commission, owning or operating for compensation in this state equipment or facilities for:

1. Producing, generating, transmitting, distributing, selling or furnishing electricity;
2. The conveyance, transmission, or reception of communication over a telephone system; or
3. Transmitting directly or indirectly or distributing combustible hydrocarbon natural or synthetic natural gas for sale to the public.

*§ 24A.23. Department of Wildlife Conservation—Confidentiality of information relating to hunting and fishing licenses*

A. The Department of Wildlife Conservation shall keep confidential the information provided by persons, including the name and address of the person, applying for or holding any permit or license issued by the Department, to the extent the information individually identifies the person. The Department may use the information for Department purposes or allow the United States Fish and Wildlife Service to use the information for survey purposes only. The Department shall allow any public body to have access to the information for purposes specifically related to the public bodies function.

B. The provisions of subsection A of this section shall not apply to information provided by persons applying for or holding a commercial hunting or fishing license.

*§ 24A.24. Office of Juvenile System Oversight—Confidentiality of investigatory records and notes*

Unless otherwise provided by law, the Office of Juvenile System Oversight may keep its investigatory records and notes confidential, unless ordered by a court of competent jurisdiction to disclose the information.

*§ 24A.25. Order of court for removal of materials from public record*

Any order of the court for removal of materials from the public record shall require compliance with the provisions of paragraphs 2 through 7 of subsection C of Section 3226 of Title 12 of the Oklahoma Statutes.

*§ 24A.26. Intergovernmental self-insurance pools*

An intergovernmental self-insurance pool may keep confidential proprietary information, such as actuarial reports, underwriting calculations, rating information and records that are created based on conclusions of such information that are developed through the operation of the intergovernmental self-insurance pool.

*§ 24A.27. Vulnerability assessments of critical assets in water and wastewater systems*

A. Any state environmental agency or public utility shall keep confidential vulnerability assessments of critical assets in both water and wastewater systems. State environmental agencies or public utilities may use the information for internal purposes or allow the information to be used for survey purposes only. The state environmental agencies or public utilities shall allow any public body to have access to the information for purposes specifically related to the public bodies function.

B. For purposes of this section:

1. “State environmental agencies” includes the:

- a. Oklahoma Water Resources Board,
- b. Oklahoma Corporation Commission,
- c. State Department of Agriculture,
- d. Oklahoma Conservation Commission,
- e. Department of Wildlife Conservation,
- f. Department of Mines, and
- g. Department of Environmental Quality;

2. “Public Utility” means any individual, firm, association, partnership, corporation or any combination thereof, municipal corporations or their lessees, trustees and receivers, owning or operating for compensation in this state equipment or facilities for:

- a. producing, generating, transmitting, distributing, selling or furnishing electricity,
- b. the conveyance, transmission, reception or communications over a telephone system,
- c. transmitting directly or indirectly or distributing combustible hydrocarbon natural or synthetic natural gas for sale to the public, or
- d. the transportation, delivery or furnishing of water for domestic purposes or for power.

*§ 24A.28. Confidential information—Exceptions*

A. The following information may be kept confidential:

1. Investigative evidence of a plan or scheme to commit an act of terrorism;
2. Assessments of the vulnerability of government facilities or public improvements to an act of terrorism and work papers directly related to preparing the assessment of vulnerability;
3. Records including details for deterrence or prevention of or protection from an act or threat of an act of terrorism;
4. Records including details for response or remediation after an act of terrorism;
5. Information technology of a public body or public official but only if the information specifically identifies:
  - a. Design or functional schematics that demonstrate the relationship or connections between devices or systems;
  - b. System configuration information;
  - c. Security monitoring and response equipment placement and configuration;
  - d. Specific location or placement of systems, components or devices;

- e. System identification numbers, names, or connecting circuits;
  - f. Business continuity and disaster planning, or response plans; or
  - g. Investigative information directly related to security penetrations or denial of services; or
6. Investigation evidence of an act of terrorism that has already been committed.
7. Records received, maintained or generated by the Oklahoma Office of Homeland Security which include confidential private business information or an individual's private records.

8. Records received by the Oklahoma Office of Homeland Security from the United States Department of Homeland Security or records maintained or generated by the Oklahoma Office of Homeland Security involving the United States Department of Homeland Security.

B. The following information shall not be kept confidential:

- 1. Records related to federal grants administered by the Oklahoma Office of Homeland Security;
- 2. Records related to the receipt and expenditure of public funds; or
- 3. Records related to the financial performance or financial administration of the Oklahoma Office of Homeland Security. C. For the purposes of this section, the term "terrorism" means any act encompassed by the definitions set forth in Section 1268.1 of Title 21 of the Oklahoma Statutes.

D. 1. Public educational institutions may keep confidential campus security plans. An institution or agency may in its discretion release information contained in or related to the campus security plan in order to design or implement the plan.

2. Nothing in this subsection shall preclude an institution or agency within The Oklahoma State System of Higher Education from collecting and releasing information relating to campus crime statistics and campus security policies as is required pursuant to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. 1092(f).

3. For purposes of this subsection, "campus security plan" shall include, but is not limited to, prevention and response procedures to and notification procedures for perceived or actual security threats and incidents on or impacting the campus.

*§ 24A.29. Protective orders for pleadings, other materials—Microfilm records—Procedures—Storing of protected materials*

A. Unless confidentiality is specifically required by law, any order directing the withholding or removal of pleadings or other material from a public record shall contain:

- 1. A statement that the court has determined it is necessary in the interests of justice to remove the material from the public record and in those instances where such withholding is required by law, the order shall so indicate;
- 2. Specific identification of the material which is to be withheld, removed or withdrawn from the public record, or which is to be filed but not placed in the public record; and
- 3. A requirement that any party seeking to file protected materials place such materials in a sealed manila envelope clearly marked with the caption and case number, the word "CONFIDENTIAL", and stating the date the order was entered and the name of the judge entering the order.

B. No protective order entered after the filing and microfilming of documents of any kind shall be construed to require the microfilm record of such filing to be amended in any fashion, and no other accounting entries may be affected by such order.

C. The party or counsel who has received the protective order shall be responsible for promptly presenting the order to appropriate supervisory court clerk personnel for action.

D. All documents produced or testimony given under a protective order shall be retained in the office of counsel until required by the court to be filed in the case.

E. Counsel for the respective parties shall be responsible for informing witnesses and other persons, as necessary, of the contents of the protective

order.

F. When a case is filed in which a party intends to seek an order withholding removing material from the public record, the parties shall be initially designated on the petition under a pseudonym such as "John or Jane Doe", or "Roe", and the petition shall clearly indicate that the party designations are fictitious. The party seeking confidentiality or other order withholding or removing the case, in whole or in part from the public record, shall immediately present application to the court, seeking instructions for the conduct of the case, including confidentiality of the records.

G. It shall be the duty of the party filing confidential materials with the court to remove the materials from the custody of the court clerk within sixty (60) days after dismissal or other disposition of the main case in which the materials were filed. If the party fails to remove confidential documents, the court clerk shall be authorized to destroy without notice such materials after a period of one (1) year has elapsed since the dismissal or other disposition of the main case in which materials were filed.

H. Municipal courts shall keep confidential all personal identifying information of the parties involved in any case in municipal court, except where such information is provided to the Oklahoma Tax Commission for purposes of collection of municipal court fees. The personal identifying information that shall be kept confidential includes the following:

- 1. Credit card numbers;
- 2. Social security numbers; and
- 3. Bank account numbers

## Open Meetings

### *Title 25. Definitions and General Provisions*

#### *Chapter 8. Public Meetings*

##### *Open Meeting Act*

### *§ 301. Citation*

This act shall be known as the Oklahoma Open Meeting Act.

### *§ 302. Public policy*

It is the public policy of the State of Oklahoma to encourage and facilitate an informed citizenry's understanding of the governmental processes and governmental problems.

### *§ 303. Times and places—Advance notice*

All meetings of public bodies, as defined hereinafter, shall be held at specified times and places which are convenient to the public and shall be open to the public, except as hereinafter specifically provided. All meetings of such public bodies, except for executive sessions of the State Banking Board and Oklahoma Savings and Loan Board, shall be preceded by advance public notice specifying the time and place of each such meeting to be convened as well as the subject matter or matters to be considered at such meeting, as hereinafter provided.

### *§ 304. Definitions*

As used in the Oklahoma Open Meeting Act:

1. "Public body" means the governing bodies of all municipalities located within this state, boards of county commissioners of the counties in this state, boards of public and higher education in this state and all boards, bureaus, commissions, agencies, trusteeships, authorities, councils, committees, public trusts or any entity created by a public trust, including any committee or subcommittee composed of any of the members of a public trust or other legal entity receiving funds from the Rural Economic Action Plan Fund as authorized by Section 2007 of Title 62 of the Oklahoma Statutes, task forces or study groups in this state supported in whole or in part by public funds or entrusted with the expending of public funds, or administering public property, and shall include all committees or subcommittees of any public body. Public

body shall not include the state judiciary, the Council on Judicial Complaints when conducting, discussing, or deliberating any matter relating to a complaint received or filed with the Council, the Legislature, or administrative staffs of public bodies, including, but not limited to, faculty meetings and athletic staff meetings of institutions of higher education when those staffs are not meeting with the public body, or entry-year assistance committees. Furthermore, public body shall not include the multidisciplinary team provided for in subsection C of Section 1-502.2 of Title 63 of the Oklahoma Statutes or any school board meeting for the sole purpose of considering recommendations of a multidisciplinary team and deciding the placement of any child who is the subject of such recommendations. Furthermore, public body shall not include meetings conducted by stewards designated by the Oklahoma Horse Racing Commission pursuant to Section 203.4 of Title 3A of the Oklahoma Statutes when the stewards are officiating at races or otherwise enforcing rules of the Commission;

2. “Meeting” means the conduct of business of a public body by a majority of its members being personally together or, as authorized by Section 307.1 of this title, together pursuant to a teleconference;

3. “Regularly scheduled meeting” means a meeting at which the regular business of the public body is conducted;

4. “Special meeting” means any meeting of a public body other than a regularly scheduled meeting or emergency meeting;

5. “Emergency meeting” means any meeting called for the purpose of dealing with an emergency. For purposes of this act, an emergency is defined as a situation involving injury to persons or injury and damage to public or personal property or immediate financial loss when the time requirements for public notice of a special meeting would make such procedure impractical and increase the likelihood of injury or damage or immediate financial loss;

6. “Continued or reconvened meeting” means a meeting which is assembled for the purpose of finishing business appearing on an agenda of a previous meeting. For the purposes of the Oklahoma Open Meeting Act, only matters on the agenda of the previous meeting at which the announcement of the continuance is made may be discussed at a continued or reconvened meeting; and

7. “Videoconference” means a conference among members of a public body remote from one another who are linked by interactive telecommunication devices permitting both visual and auditory communication between and among members of the public body and members of the public. During any videoconference both the visual and auditory communications functions of the device shall be utilized. Whenever the term “teleconference” appears in any law in relation to a meeting of a public body, it shall be deemed to mean a videoconference as defined in this paragraph.

#### § 305. *Recording of votes*

In all meetings of public bodies, the vote of each member must be publicly cast and recorded.

#### § 306. *Circumvention of act—Teleconferences excepted*

No informal gatherings or any electronic or telephonic communications, except teleconferences as authorized by Section 3 of this act, among a majority of the members of a public body shall be used to decide any action or to take any vote on any matter.

#### § 307. *Executive sessions*

A. No public body shall hold executive sessions unless otherwise specifically provided in this section.

B. Executive sessions of public bodies will be permitted only for the purpose of:

1. Discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee;

2. Discussing negotiations concerning employees and representatives of employee groups;

3. Discussing the purchase or appraisal of real property;

4. Confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the

advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest;

5. Permitting district boards of education to hear evidence and discuss the expulsion or suspension of a student when requested by the student involved or the student’s parent, attorney or legal guardian;

6. Discussing matters involving a specific handicapped child;

7. Discussing any matter where disclosure of information would violate confidentiality requirements of state or federal law;

8. Engaging in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act; or

9. Discussing the following:

a. the investigation of a plan or scheme to commit an act of terrorism,

b. assessments of the vulnerability of government facilities or public improvements to an act of terrorism,

c. plans for deterrence or prevention of or protection from an act of terrorism,

d. plans for response or remediation after an act of terrorism,

e. information technology of the public body but only if the discussion specifically identifies:

(1) design or functional schematics that demonstrate the relationship or connections between devices or systems,

(2) system configuration information,

(3) security monitoring and response equipment placement and configuration,

(4) specific location or placement of systems, components or devices,

(5) system identification numbers, names, or connecting circuits,

(6) business continuity and disaster planning, or response plans, or

(7) investigation information directly related to security penetrations or denial of services, or

f. the investigation of an act of terrorism that has already been committed.

For the purposes of this subsection, the term “terrorism” means any act encompassed by the definitions set forth in Section 1268.1 of Title 21 of the Oklahoma Statutes.

C. Notwithstanding the provisions of subsection B of this section, the following public bodies may hold executive sessions:

1. The State Banking Board, as provided for under Section 306.1 of Title 6 of the Oklahoma Statutes;

2. The Oklahoma Industrial Finance Authority, as provided for in Section 854 of Title 74 of the Oklahoma Statutes;

3. The Oklahoma Development Finance Authority, as provided for in Section 5062.6 of Title 74 of the Oklahoma Statutes;

4. The Oklahoma Center for the Advancement of Science and Technology, as provided for in Section 5060.7 of Title 74 of the Oklahoma Statutes;

5. The Oklahoma Savings and Loan Board, as provided for under subsection A of Section 381.74 of Title 18 of the Oklahoma Statutes;

6. The Oklahoma Health Research Committee for purposes of conferring on matters pertaining to research and development of products, if public disclosure of the matter discussed would interfere with the development of patents, copyrights, products, or services;

7. A review committee, as provided for in Section 855 of Title 62 of the Oklahoma Statutes;

8. The Child Death Review Board for purposes of receiving and conferring on matters pertaining to materials declared confidential by law;

9. The Domestic Violence Fatality Review Board as provided in Section 1601 of Title 22 of the Oklahoma Statutes;

10. All nonprofit foundations, boards, bureaus, commissions, agencies, trusteeships, authorities, councils, committees, public trusts, task forces or study groups supported in whole or part by public funds or entrusted with the expenditure of public funds for purposes of conferring on matters pertaining to economic development, including the transfer of property, financing, or the creation of a proposal to entice a business to remain or to locate within their jurisdiction if public disclosure of the matter discussed would interfere with the development of products or services or if public disclosure would violate the confidentiality of the business;

11. The Oklahoma Indigent Defense System Board for purposes of discussing negotiating strategies in connection with making possible counter-offers to offers to contract to provide legal representation to indigent criminal defendants and indigent juveniles in cases for which the System must provide representation pursuant to the provisions of the Indigent Defense System Act; and

12. The Quality Investment Committee for purposes of discussing applications and confidential materials pursuant to the terms of the Oklahoma Quality Investment Act.

D. An executive session for the purpose of discussing the purchase or appraisal of real property shall be limited to members of the public body, the attorney for the public body, and the immediate staff of the public body. No landowner, real estate salesperson, broker, developer, or any other person who may profit directly or indirectly by a proposed transaction concerning real property which is under consideration may be present or participate in the executive session.

E. No public body may go into an executive session unless the following procedures are strictly complied with:

1. The proposed executive session is noted on the agenda as provided in Section 311 of this title;

2. The executive session is authorized by a majority vote of a quorum of the members present and the vote is a recorded vote; and

3. Except for matters considered in executive sessions of the State Banking Board and the Oklahoma Savings and Loan Board, and which are required by state or federal law to be confidential, any vote or action on any item of business considered in an executive session shall be taken in public meeting with the vote of each member publicly cast and recorded.

F. A willful violation of the provisions of this section shall:

1. Subject each member of the public body to criminal sanctions as provided in Section 314 of this title; and

2. Cause the minutes and all other records of the executive session, including tape recordings, to be immediately made public.

#### *§ 307.1. Teleconferences and videoconferences*

A.

A public body may hold meetings by videoconference where each member of the public body is visible and audible to each other and the public through a video monitor, subject to the following:

1. No less than a quorum of the public body shall be present in person at the site of each meeting;

2. The meeting notice and agenda prepared in advance of the meeting, as required by law, shall indicate the meeting will include videoconferencing locations and shall state:

a. the location, address, and telephone number of each available videoconference site, and

b. the identity of each member of the public body and the specific site from which each member of the body shall be physically present and participating in the meeting;

3. After the meeting notice and agenda are prepared and posted, as required by law, no member of the public body shall be allowed to participate in the meeting from any location other than the specific location posted on the agenda in advance of the meeting;

4. In order to allow the public the maximum opportunity to attend and observe each public official carrying out their duties, a member or members of a public body desiring to participate in a meeting by videoconference shall participate in the videoconference from a site and room from within the district

or political subdivision from which they are elected, appointed, or are sworn to represent;

5. Each site and room where a member of the public body is present for a meeting by videoconference shall be open and accessible to the public, and the public shall be allowed into that site and room. Public bodies may provide additional videoconference sites as a convenience to the public, but additional sites shall not be used to exclude or discourage public attendance at any videoconference site;

6. The public shall be allowed to participate and speak, as allowed by rule or policy set by the public body, in a meeting at the videoconference site in the same manner and to the same extent as the public is allowed to participate or speak at the site of the meeting;

7. Any materials shared electronically between members of the public body, before or during the videoconference, shall also be immediately available to the public in the same form and manner as shared with members of the public body; and

8. All votes occurring during any meeting conducted using videoconferencing shall occur and be recorded by roll call vote.

B. No public body authorized to hold meetings by teleconference or videoconference shall conduct an executive session by teleconference or videoconference.

#### *§ 308. Meeting between Governor and majority members of public body*

Any meeting between the Governor and a majority of members of any public body shall be open to the public and subject to all other provisions of this act.

#### *§ 309. Legislature*

The Legislature shall conduct open meetings in accordance with rules to be adopted by each house thereof.

#### *§ 310. Legislative committee members attending executive sessions*

Any member of the Legislature appointed as a member of a committee of either house of the Legislature or joint committee thereof shall be permitted to attend any executive session authorized by the Oklahoma Open Meeting Act of any state agency, board or commission whenever the jurisdiction of such committee includes the actions of the public body involved.

#### *§ 311. Public bodies—Notice*

A. Notwithstanding any other provisions of law, all regularly scheduled, continued or reconvened, special or emergency meetings of public bodies shall be preceded by public notice as follows:

1. All public bodies shall give notice in writing by December 15 of each calendar year of the schedule showing the date, time and place of the regularly scheduled meetings of such public bodies for the following calendar year.

2. All state public bodies, including, but not limited to, public trusts and other bodies with the state as beneficiary, shall give such notice to the Secretary of State.

3. All county public bodies, including, but not limited to, public trusts and any other bodies with the county as beneficiary, shall give such notice to the county clerk of the county wherein they are principally located.

4. All municipal public bodies, including, but not limited to, public trusts and any other bodies with the municipality as beneficiary, shall give such notice to the municipal clerk of the municipality wherein they are principally located.

5. All multicounty, regional, areawide or district public bodies, including, but not limited to, district boards of education, shall give such notice to the county clerk of the county wherein they are principally located, or if no office exists, to the county clerk of the county or counties served by such public body.

6. All governing boards of state institutions of higher education, and committees and subcommittees thereof, shall give such notice to the Secretary of State. All other public bodies covered by the provisions of this act which exist under the auspices of a state institution of higher education, but a majority

of whose members are not members of the institution's governing board, shall give such notice to the county clerk of the county wherein the institution is principally located.

7. The Secretary of State and each county clerk or municipal clerk shall keep a record of all notices received in a register open to the public for inspection during regular office hours, and, in addition, shall make known upon any request of any person the contents of said register.

8. If any change is to be made of the date, time or place of regularly scheduled meetings of public bodies, then notice in writing shall be given to the Secretary of State or county clerk or municipal clerk, as required herein, not less than ten (10) days prior to the implementation of any such change.

9. In addition to the advance public notice in writing required to be filed for regularly scheduled meetings, all public bodies shall, at least twenty-four (24) hours prior to such meetings, display public notice of said meeting, setting forth thereon the date, time, place and agenda for said meeting, such twenty-four (24) hours prior public posting shall exclude Saturdays and Sundays and holidays legally declared by the State of Oklahoma; provided, however, the posting of an agenda shall not preclude a public body from considering at its regularly scheduled meeting any new business. Such public notice shall be posted in prominent public view at the principal office of the public body or at the location of said meeting if no office exists. "New business", as used herein, shall mean any matter not known about or which could not have been reasonably foreseen prior to the time of posting.

10. In the event any meeting is to be continued or reconvened, public notice of such action, including date, time and place of the continued meeting, shall be given by announcement at the original meeting. Only matters appearing on the agenda of the meeting which is continued may be discussed at the continued or reconvened meeting.

11. Special meetings of public bodies shall not be held without public notice being given at least forty-eight (48) hours prior to said meetings. Such public notice of date, time and place shall be given in writing, in person or by telephonic means to the Secretary of State or to the county clerk or to the municipal clerk by public bodies in the manner set forth in paragraphs 2, 3, 4, 5 and 6 of this section. The public body also shall cause written notice of the date, time and place of the meeting to be mailed or delivered to each person, newspaper, wire service, radio station, and television station that has filed a written request for notice of meetings of the public body with the clerk or secretary of the public body or with some other person designated by the public body. Such written notice shall be mailed or delivered at least forty-eight (48) hours prior to the special meeting. The public body may charge a fee of up to Eighteen Dollars (\$18.00) per year to persons or entities filing a written request for notice of meetings, and may require such persons or entities to renew the request for notice annually. In addition, all public bodies shall, at least twenty-four (24) hours prior to such special meetings, display public notice of said meeting, setting forth thereon the date, time, place and agenda for said meeting. Only matters appearing on the posted agenda may be considered at said special meeting. Such public notice shall be posted in prominent public view at the principal office of the public body or at the location of said meeting if no office exists. Twenty-four (24) hours prior public posting shall exclude Saturdays and Sundays and holidays legally declared by the State of Oklahoma.

12. In the event of an emergency, an emergency meeting of a public body may be held without the public notice heretofore required. Should an emergency meeting of a public body be necessary, the person calling such a meeting shall give as much advance public notice as is reasonable and possible under the circumstances existing, in person or by telephonic or electronic means.

B.

1. All agendas required pursuant to the provisions of this section shall identify all items of business to be transacted by a public body at a meeting, including, but not limited to, any proposed executive session for the purpose of engaging in deliberations or rendering a final or intermediate decision in an individual proceeding prescribed by the Administrative Procedures Act.

2. If a public body proposes to conduct an executive session, the agenda shall:

a. contain sufficient information for the public to ascertain that an executive session will be proposed;

b. identify the items of business and purposes of the executive session; and

c. state specifically the provision of Section 307 of this title authorizing the executive session.

#### *§ 312. Minutes of meetings—Recording of proceedings*

A. The proceedings of a public body shall be kept by a person so designated by such public body in the form of written minutes which shall be an official summary of the proceedings showing clearly those members present and absent, all matters considered by the public body, and all actions taken by such public body. The minutes of each meeting shall be open to public inspection and shall reflect the manner and time of notice required by this act.

B. In the written minutes of an emergency meeting, the nature of the emergency and the proceedings occurring at such meeting, including reasons for declaring such emergency meeting, shall be included.

C. Any person attending a public meeting may record the proceedings of said meeting by videotape, audiotape or by any other method; providing, however, such recording shall not interfere with the conduct of the meeting.

#### *§ 313. Actions taken in willful violation of act*

Any action taken in willful violation of this act shall be invalid.

#### *§ 314. Violations—Misdemeanor—Penalty*

Any person or persons willfully violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for a period not exceeding one (1) year or by both such fine and imprisonment.