



CV 24 551

Stinson

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FRONTIER MEDIA GROUP, INC. and )  
BRIANNA BAILEY, )  
Plaintiffs, )

vs. )

OKLAHOMA COUNTY CRIMINAL )  
JUSTICE AUTHORITY and BRANDI GARNER )  
in her official capacity as Chief Executive Officer )  
of the OKLAHOMA COUNTY DETENTION )  
CENTER )  
Defendants. )

Case No. **CV-2024-551**

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

MAR - 4 2024

RICK WARREN  
COURT CLERK

50 \_\_\_\_\_

**PETITION FOR RELIEF FOR**  
**VIOLATIONS OF THE OPEN RECORDS ACT**

Plaintiffs Frontier Media Group, Inc. and Brianna Bailey (collectively "Plaintiffs"), by and through their undersigned counsel, petition this Court, under Okla. Stat. tit. 51, §§ 24A.1-24A.32, the Oklahoma Open Records Act, for:

i. an order pursuant to Okla. Stat. tit. 12, §§ 1381-1398 enjoining Defendants Oklahoma County Criminal Justice Authority ("OCCJA") and Brandi Garner in her official capacity as Chief Executive Officer ("CEO") of Oklahoma County Detention Center ("OCDC") (collectively "Defendants") from denying access to specific public records in violation of the Oklahoma Open Records Act ("ORA"), Okla. Stat. tit. 51, §§ 24A.1-24A.32;

ii. an order pursuant to the Court's authority under Okla. Stat. tit. 12 § 1651 declaring that OCCJA is not, as Defendants assert, a "law enforcement agency" under the meaning of Okla. Stat. tit. 51, § 24A.8, and not subject to the rules governing a law enforcement agency's rights and responsibilities described therein;

iii. a declaration of the rights and responsibilities of Defendants as to the public records sought by Plaintiffs; and

iv. a writ of mandamus pursuant to Okla. Stat. tit. 12, §§ 1451-1462 directing Defendants to produce the requested public records.

In support of this Petition, Plaintiffs allege and state the following:

### **PARTIES**

1. Plaintiff Frontier Media Group, Inc. (“The Frontier”) is a nonprofit news corporation that produces illuminating journalism as a public service for the benefit of all Oklahomans. The Frontier makes its content freely and openly available on its website ([readfrontier.org](http://readfrontier.org)) and various social media platforms.

2. Plaintiff Brianna Bailey (“Bailey”) is an award-winning journalist and Managing Editor at The Frontier, where she covers a wide variety of subject areas, including Oklahoma’s criminal justice system.

3. Defendant Oklahoma County Criminal Justice Authority is a public trust tasked with administering operations at the Oklahoma County Detention Center. As such it is a “public body” within the meaning of the ORA. Okla. Stat. tit. 51, § 24A.3(2).

4. Defendant Brandi Garner (“Garner”) is a natural person who currently serves as CEO of the Oklahoma County Detention Center. As such, Garner is a “public official” within the meaning of the ORA. *Id.* § 24A.3(4).

### **THE OPEN RECORDS ACT**

5. The purpose of the ORA 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.” Okla. Stat. tit. 51, § 24A.2.

6. “Unless a record falls within a statutorily prescribed exemption in the [ORA], the record must be made available for public inspection.” *Citizens Against Taxpayer Abuse, Inc. v. City of Oklahoma City*, 2003 OK 65, ¶12, 73 P.3d 871, 875.

7. “The public body urging an exemption [to disclosure] has the burden to establish the applicability of such exemption.” *Id.*

8. “Because of the strong public policy allowing public access to governmental records,” the ORA’s provisions must be construed “to allow access unless an exception clearly applies.” *Okla. Ass’n of Broads., Inc. v. City of Norman*, 2016 OK 119, ¶15, 390 P.3d 689, 694 (2016).

9. “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.” Okla. Stat. tit. 51, § 24A.2.

### STATEMENT OF FACTS

10. OCCJA is a public trust authority in Oklahoma County created under Okla. Stat. tit. 60 § 176, with the principal responsibility, since 2020, of operating the OCDA, the Oklahoma County jail.

11. In the years since OCDA came under the control of the OCCJA, the rate of inmate deaths at the jail has risen dramatically; a report issued in 2023 by a Multi County Grand Jury convened to investigate reports of problems at OCDA found that “inadequate staffing, funding, surveillance, and training, coupled with poor law enforcement protocols, led to the significant loss of life within the jail.”<sup>1</sup>

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<sup>1</sup> [https://www.oag.ok.gov/sites/g/files/gmc766/f/documents/2023/gj-2021-040\\_final\\_report\\_filed.pdf](https://www.oag.ok.gov/sites/g/files/gmc766/f/documents/2023/gj-2021-040_final_report_filed.pdf).

12. Turn Key Health Clinics, LLC (“Turn Key”), is a healthcare provider that has contracted with the OCCJA to furnish a full range of health services to inmates at OCDA, including medical, dental, pharmaceutical, and psychiatric care.

13. On April 16, 2023, in her capacity as a reporter for The Frontier, Brianna Bailey submitted an open records request to the OCCJA seeking:

Any emails jail trust staff received from [email addresses of Turn Key staff] between April 7, 2023; and Jan. 1, 2021; any notices to cure or notices of failure to comply with the terms of the contract between the Authority and Turn Key Health Clinic between January 1, 2021 and April 7, 2023; and policy manuals of Turn Key Health Clinic.

A true and correct copy of Bailey’s request is attached hereto as Exhibit A.

14. In a letter dated April 17, 2023, Defendants denied Bailey’s request in its entirety, asserting in justification of the denial as follows:

Section 24A.8 of the Open Records Act limits those records which a law enforcement agency, such as the Oklahoma County Criminal Justice Authority, must make available. Access to records falling within the narrow scope of Section 24A.8 may, nonetheless, be denied, if protected as confidential by any other provision of state or federal law.

Your request for documents includes records that are outside the scope of Section 4A.8 of the Open Records Act. As such, the Authority respectfully declines your request for records.

A true and correct copy of Defendants’ denial letter is attached hereto as Exhibit B.

15. On May 10, 2023, Bailey submitted a second open records request to OCCJA, this time seeking:

[A]ll contracts and amendments with Turn Key Health Clinics for healthcare services, all policy manuals provided by Turn Key in accordance with any contract for services, any notices to cure or notices of failure to comply with the contract for healthcare services sent by the Authority between January 1, 2021 and April 29, 2023, any pharmaceutical matrix or drug formulary covered or offered by

Turn Key Health Clinics, all staffing plans of Turn Key Health Clinics, all audits/reviews/assessments of Turn Key Health Clinic's performance conducted by any governmental or private entity during their contract periods), and all medication error reports created during their contract period(s).

A true and correct copy of Bailey's second request is attached hereto as Exhibit C.

16. In a letter dated May 11, 2023, Defendants denied Bailey's request in its entirety once again, asserting in justification of that decision:

Section 24A.8 of the Open Records Act limits those records which a law enforcement agency, such as the Oklahoma County Criminal Justice Authority, must make available. Access to records falling within the narrow scope of Section 24A.8 may, nonetheless, be denied, if protected as confidential by any other provision of state or federal law.

Your request for documents includes records that are outside the scope of Section 24A.8 of the Open Records Act. There are no records within the scope of Section 24A.8. As such, the Authority respectfully declines your request for records.

A true and correct copy of Defendants' denial letter is attached hereto as Exhibit D.

17. On December 8, 2023, counsel for Plaintiffs sent a detailed letter to Defendants' counsel, Assistant District Attorney Aaron Etherington, recounting the events described hereinabove, explaining the strong public interest in favor of releasing the records Plaintiffs requested, and articulating the legal authority that supports the records' release under the ORA. A true and correct copy of undersigned counsel's letter is attached hereto as Exhibit E.

18. Having received no response to the December 8, 2023, letter, on January 8, 2024, counsel for Plaintiffs followed up via email, requesting a response. Assistant District Attorney Etherington responded the same day: "Please proceed as you feel necessary." A copy of the email exchange is attached hereto as Exhibit F.

19. While the ORA defines a law enforcement agency as “any public body charged with enforcing state or local criminal laws and initiating criminal prosecutions,” OCCJA does not undertake any of these functions.

20. Instead, OCCJA manages a high-security residential facility, provides residents with meals, a safe environment, and opportunities for self-betterment. The records Plaintiffs seek inquire only into OCCJA functions pertaining to the provision of health care services to OCDA inmates. The records do not concern any OCCJA function that is in any way analogous to that of a law enforcement agency.

21. Moreover, even in instances in which an agency claims a valid reason for withholding a public record, the agency can be compelled to release the record if “a court finds that the public interest or the interest of an individual outweighs the reason for denial.” 51 O.S. §24A.8(B).

22. Considering the cloud of suspicion OCCJA has been under, and the profound concern for the health and welfare of OCDA inmates registered in the Multiple County Grand Jury report, and the cloud of suspicion OCCJA operated under for years, the public interest in release of records that pertain narrowly and specifically to matters related to inmate health vastly outweighs any interest OCCJA may have in keeping them secret.

#### **CAUSE OF ACTION**

#### **Violation of the ORA for Unlawful Withholding of Records Responsive to Plaintiffs’ Requests (All Defendants)**

23. Plaintiffs repeat, reallege, and incorporate the allegations set forth in paragraphs 1 through 22 as though fully set forth herein.

24. Under the ORA, “all records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction.” Okla. Stat. tit. 51, § 24A.5.

25. In order to effectuate this right of access, “a public body must provide prompt, reasonable access to its records.” *Id.* § 24A.5(6).

26. The records sought by Plaintiffs are public records of a public body and public officials, as defined by the ORA. *Id.* § 24A.3.

27. Defendants have failed to provide prompt, reasonable access to records responsive to Plaintiffs’ requests.

28. Defendants’ claimed justification for failing to provide timely access to the records at issue—that the records may be withheld on the basis that OCCJA is a law enforcement agency under the ORA and the records are exempt from disclosure pursuant to Okla. Stat. tit. 51, § 24A.8—lacks any basis in fact or law, because OCCJA does not perform law enforcement functions, nor do the records sought pertain to any arguable law enforcement function. Rather, the records pertain to the provision of health care services to OCDA inmates.

29. Alternatively, if the Court finds merit in OCCJA’s claim to be a law enforcement agency covered by Section 24.A.8 of the ORA, OCCJA must nevertheless provide access to the requested records because the public interest in disclosure—in order to facilitate oversight of OCCJA’s management of the OCDA and its provision of health care services to inmates—outweighs OCCJA’s stated justification for a denial.

30. Defendants have unlawfully denied Plaintiffs access to records responsive to Plaintiffs’ requests.

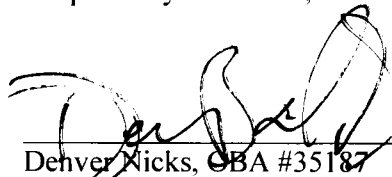
31. Defendants' denials and withholding of records requested by Plaintiffs are an abrogation of their obligations set forth in the ORA, in violation of the letter and spirit of the statute.

### RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Declare, pursuant to the Court's authority and Okla. Stat. tit. 51, § 24A.17(B), that:
  - i. The records sought by Plaintiffs are public records pursuant to the ORA;
  - ii. Neither OCCJA nor OCDC is a "law enforcement agency" under the ORA with rights and obligations detailed in Okla. Stat. tit. 51, § 24A.8; and
  - iii. Plaintiffs are entitled to prompt disclosure of the requested records;
- B. Grant an injunction, pursuant to Okla. Stat. tit. 51, § 24A.17(B), or issue a writ of mandamus pursuant to Okla. Stat. tit. 12, §§ 1451-1462, requiring Defendants to immediately disclose all records requested by Plaintiffs under the ORA;
- C. Award Plaintiffs' reasonable attorneys' fees in this action, pursuant to Okla. Stat. tit. 51, § 24A.17(B)(2); and
- D. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,



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Denver Nicks, OBA #35187  
Reporters Committee for Freedom of the Press  
1923 N. Santa Fe Ave  
Tulsa, OK 74127  
T: (918) 219-3955  
dnicks@gmail.com  
*Counsel for Plaintiffs*



# Exhibit A



Brianna Bailey <brianna@readfrontier.com>

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## Open records request for jail documents

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**Brianna Bailey** <brianna@readfrontier.com>

Mon, Apr 17, 2023 at 4:08 PM

To: williams@wbflaw.com

Cc: "Opgrande, Mark" <Mark.Opgrande@oklahomacounty.org>

Hi, Mr. Williams,

Pursuant to the Oklahoma Open Records Act, I'm requesting the following documents. I have attached an open records request form.

Any emails jail trust staff received from jlewis@turnkeyhealthclinics.com; jechols@turnkeyhealthclinics.com; wcooper@turnkeyhealthclinics.com and jwhite@turnkeyhealthclinics.com between April 7, 2023 and Jan. 1, 2021.

Any notices to cure or notices of failure to comply with the terms of the trust's contract with Turn Key the trust has sent to Turn Key Health Clinics between April 7, 2023 and Jan. 1, 2021.

A copy of Turn Key Health Clinic's current policy manual.

I am requesting digital copies of all records when possible. Please let me know if there are any questions or anything I can do to lessen the work for your staff to fill my request.

if you deny any part of my request, please cite the specific exemption under the Oklahoma Open Records Act you believe justifies the denial

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 **20221213-open\_records\_request\_form (2) (1) (1).pdf**  
348K

# Exhibit B

OKLAHOMA COUNTY  
SEVENTH DISTRICT  
STATE OF OKLAHOMA



320 ROBERT S. KERR, SUITE 505  
OKLAHOMA CITY, OK 73102  
(405) 713-1600  
(405) 235-1567 facsimile

**Vicki Zemp Behenna**  
DISTRICT ATTORNEY

**Mykel Fry**  
FIRST ASSISTANT DISTRICT ATTORNEY

April 17, 2023

Brianna Bailey  
c/o Read Frontier  
3436 Grant Road  
Norman, OK 73071  
brianna@readfrontier.com

Re: *Open Records Request*

Dear Ms. Bailey:

The District Attorney's Office represents the Oklahoma County Criminal Justice Authority. I am in receipt of your request for records dated April 16, 2023. Specifically, you have requested the following records: electronic communications received from specified email accounts of Turn Key Health Clinic between January 1, 2021 and April 7, 2023; any notices to cure or notices of failure to comply with the terms of the contract between the Authority and Turn Key Health Clinic between January 1, 2021 and April 7, 2023; and policy manuals of Turn Key Health Clinic.

Section 24A.8 of the Open Records Act limits those records which a law enforcement agency, such as the Oklahoma County Criminal Justice Authority, must make available. Access to records falling within the narrow scope of Section 24A.8 may, nonetheless, be denied, if protected as confidential by any other provision of state or federal law.

Your request for documents includes records that are outside the scope of Section 24A.8 of the Open Records Act. As such, the Authority respectfully declines your request for records.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Etherington".  
Aaron Etherington  
Assistant District Attorney

# Exhibit C

**Open Records Request**

Brianna Bailey <brianna@readfrontier.com>

Wed, May 10, 2023 at 5:53 PM

To: "Etherington, Aaron" <aaron.etherington@oklahomacounty.org>, John Michael Williams <williams@wbflaw.com>, "Opgrande, Mark" <Mark.Opgrande@oklahomacounty.org>



Pursuant to the Oklahoma Open Records Act, I am writing to request any and all contracts (and amendments) the Oklahoma County Criminal Justice Authority has entered into with Turn Key Health Clinics for services related to correctional health care ;

Any and all policy manuals provided by Turn Key as part of its contract;

Any notices to cure or notices of failure to comply with the terms of the Oklahoma County Criminal Justice Authority's contract with Turn Key the trust has sent to Turn Key Health Clinics between April 29, 2023, and Jan. 1, 2021;

A copy of Turn Key Health Clinic's policy manual;

Any and all agreed-upon pharmaceutical matrix (often referred to as either a drug formulary, pharmaceutical formulary or drug list), which is a list of prescription drugs covered and/or offered by Turn Key Health Clinics to those in the custody of the correctional system;

Any and all copies of staffing plans Turn Key Health Clinics. Often referred to as a "staffing matrix", this includes the agreed-upon staffing levels necessary to provide the health care services required by the terms of the contract;

Any and all audits/reviews/assessments of Turn Key Health Clinic's performance conducted by the government or by a private entity since the beginning of the contract until the date this request is processed;

Any and all medication error reports filed from the beginning of the contract until the date this request is processed. These forms are to be filled out when the wrong medication has been administered. Turn Key titles these forms as "Medication Error reports."

I am requesting digital copies of all records when possible. Please let me know if there are any questions or anything I can do to lessen the work for your staff to fill my request.

if you deny any part of my request, please cite the specific exemption under the Oklahoma Open Records Act you believe justifies the denial

Brianna Bailey

Brianna Bailey  
Managing Editor  
The Frontier  
[www.readfrontier.org](http://www.readfrontier.org)  
[brianna@readfrontier.com](mailto:brianna@readfrontier.com)  
Subscribe to our newsletters  
Cell: 949-439-4855  
Twitter: @brnOKC

 20221213-open\_records\_request\_form (1).pdf  
344K

# Exhibit D

OKLAHOMA COUNTY  
SEVENTH DISTRICT  
STATE OF OKLAHOMA



320 ROBERT S. KERR, SUITE 505  
OKLAHOMA CITY, OK 73102  
(405) 713-1600  
(405) 235-1567 facsimile

**Vicki Zemp Behenna**  
DISTRICT ATTORNEY

**Mykel Fry**  
FIRST ASSISTANT DISTRICT ATTORNEY

May 11, 2023

Brianna Bailey  
brianna@readfrontier.com

Re: *Open Records Request*

Dear Ms. Bailey:

The District Attorney's Office represents the Oklahoma County Criminal Justice Authority. I am in receipt of your request for records dated May 10, 2023. Specifically, you have requested the following records: all contracts and amendments with Turn Key Health Clinics for healthcare services, all policy manuals provided by Turn Key in accordance with any contract for services, any notices to cure or notices of failure to comply with the contract for healthcare services sent by the Authority between January 1, 2021 and April 29, 2023, any pharmaceutical matrix or drug formulary covered or offered by Turn Key Health Clinics, all staffing plans of Turn Key Health Clinics, all audits/reviews/assessments of Turn Key Health Clinic's performance conducted by any governmental or private entity during their contract period(s), and all medication error reports created during their contract period(s).

Section 24A.8 of the Open Records Act limits those records which a law enforcement agency, such as the Oklahoma County Criminal Justice Authority, must make available. Access to records falling within the narrow scope of Section 24A.8 may, nonetheless, be denied, if protected as confidential by any other provision of state or federal law.

Your request for documents includes records that are outside the scope of Section 24A.8 of the Open Records Act. There are no records within the scope of Section 24A.8. As such, the Authority respectfully declines your request for records.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Etherington".

Aaron Etherington  
Assistant District Attorney



# Exhibit E

# REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1020  
Washington, D.C. 20005  
(202) 795-9300 • www.rcfp.org

Bruce D. Brown, Executive Director  
bruce.brown@rcfp.org

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STEPHEN J. ADLER

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MARGARET LOW  
WBUR

## SECRETARY-TREASURER

MASSIMO CALABRESI  
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Hearst

JEREMY JOJOLA  
9NEWS Colorado

KAREN KAISER  
The Associated Press

KIMBRIEL KELLY  
Los Angeles Times

DAVID LAUTER  
Los Angeles Times

COLLEEN MCCAIN NELSON  
The McClatchy Company

JAMES NEFF  
Philadelphia Inquirer

NORMAN PEARLSTINE  
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BakerHostetler, Ret.

CHARLIE SAVAGE  
The New York Times

JENNIFER SONDRAG  
Bloomberg News

NABILLA SYED  
The Markup

ADAM SYMSON  
The E.W. Scripps Company

MATT THOMPSON  
The New York Times

VICKIE WALTON-JAMES  
NPR

SUSAN ZIRINSKY  
CBS News

*Affiliations appear only for purposes of identification.*

December 8, 2023

## VIA EMAIL

Assistant District Attorney Aaron Etherington  
320 ROBERT S. KERR, SUITE 505  
OKLAHOMA CITY, OK 73102  
(405) 713-1600  
(405) 235-1567 facsimile  
aaron.etherington@oklahomacounty.org

Re: The Frontier Public Records Request to the Oklahoma County Criminal Justice Authority

Dear Assistant District Attorney Aaron Etherington:

I represent *The Frontier* and its reporter, Brianna Bailey, regarding her public records request to the Oklahoma County Criminal Justice Authority (OCCJA) seeking records related to the relationship between the Oklahoma County Detention Center and Turn Key Health Clinics.

On April 17, 2023, Ms. Bailey requested that OCCJA provide her:

Any emails jail trust staff received from  
jlewis@turnkeyhealthclinics.com;  
jehols@turnkeyhealthclinics.com;  
wcooper@turnkeyhealthclinics.com; and  
jwhite@turnkeyhealthclinics.com between April 7, 2023  
and Jan. 1, 2021.

Any notices to cure or notices of failure to comply with the terms of the trust's contract with Turn Key the trust has sent to Turn Key Health Clinics between April 7, 2023 and Jan. 1, 2021.

A copy of Turn Key Health Clinic's current policy manual.

On May 10, 2023, Ms. Bailey requested that OCCJA provide her:

[A]ny and all contracts (and amendments) the Oklahoma County Criminal Justice Authority has entered into with Turn Key Health Clinics for services related to correctional health care; Any and all policy manuals provided by Turn Key as part of its contract; Any notices to cure or notices of failure to comply with the terms of the Oklahoma County

Criminal Justice Authority's contract with Turn Key the trust has sent to Turn Key Health Clinics between April 29, 2023, and Jan. 1, 2021; A copy of Turn Key Health Clinic's policy manual; Any and all agreed-upon pharmaceutical matrix (often referred to as either a drug formulary, pharmaceutical formulary or drug list), which is a list of prescription drugs covered and/or offered by Turn Key Health Clinics to those in the custody of the correctional system; Any and all copies of staffing plans of Turn Key Health Clinics. Often referred to as a "staffing matrix", this includes the agreed-upon staffing levels necessary to provide the health care services required by the terms of the contract; Any and all audits/reviews/assessments of Turn Key Health Clinic's performance conducted by the government or by a private entity since the beginning of the contract until the date this request is processed; Any and all medication error reports filed from the beginning of the contract until the date this request is processed. These forms are to be filled out when the wrong medication has been administered. Turn Key titles these forms as "Medication Error reports."

These requests were made pursuant to the Oklahoma Open Records Act (hereinafter "the ORA") which has a presumption in favor of disclosure. 51 O.S. § 24A.2 (establishing that "the person, agency or political subdivision denying access to open records shall at all times bear the burden of establishing such records are protected").

In response to both requests, Ms. Bailey received denials from the District Attorney's office, counsel for OOCJA, stating that OCCJA is a law enforcement agency and the records were being withheld because they "are outside the scope of Section 24A.8 of the Open Records Act," the section that concerns which records a law enforcement agency must make available to the public. I write to urge OCCJA to reconsider its denials and provide Ms. Bailey with the requested public records.

The ORA lists several agencies that fall under the law enforcement designation, including "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." Note that no corrections institution or entity devoted exclusively to management of corrections facilities is among them. 51 O.S. §24A.3. While the statute states that this list is not exhaustive, additional language makes clear that OCCJA is not among the government agencies that may invoke a law enforcement records exemption. The ORA defines a law enforcement agency as "any public body charged with enforcing state or local criminal laws and initiating criminal prosecutions." In contrast, OCCJA does not undertake any of these functions. Rather, it is charged with managing a high-security residential facility, providing residents with meals and opportunities for self-betterment, ensuring resident safety, and providing residents with access to healthcare.

In fact, the Oklahoma Department of Corrections (DOC) has previously argued in support of this very point. *See Transportation Info. Servs., Inc. v. State of Oklahoma ex rel. Oklahoma Dep't of Corrections*, 970 P.2d 166, 169 n. 2 (Okla. 1998) (“The trial judge specifically asked whether DOC is a law enforcement agency under the [ORA]. DOC counsel responded, ‘We’re not a law enforcement agency’”). In that case, the court ultimately ruled that the DOC had to turn over requested records on other grounds and thus declined to issue a ruling on the law enforcement designation question. But if the top corrections agency in Oklahoma asserts that it is not a law enforcement agency, it’s hard to imagine how the trust authority that oversees a county jail is. In *Frontier Media Grp. et al v. Pottawatomie Cnty. Pub. Safety Ctr. Trust*, the trust authority that operates the jail in Pottawatomie County (an entity analogous to OCCJA) was estopped by the Court of Civil Appeals from raising the argument that it is a law enforcement agency under the ORA, having asserted forcefully that it is *not* a law enforcement agency earlier in the same case. OCCJA’s position that it is a law enforcement agency under the ORA is unsupported by the language of the Act and finds no support in applicable caselaw.

Finally, even if OCCJA were wrongly held to be a law enforcement agency under the ORA, such a finding would not afford OCCJA a blanket exemption from its obligations as a public body to, in the words of the Open Records Act, “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.” 51 O.S. §24A.2. The records at issue involve the relationship between a healthcare provider and the people residing in the Oklahoma County Detention Center. These requests do not inquire into any OCCJA function that might conceivably be analogous to, or even in the nature of, the responsibilities of a law enforcement agency. Centering the function of the records sought rather than that of the agency that controls them when determining the applicability of a law enforcement exemption in an open records request is in accordance with open records jurisprudence. Indeed, the federal Freedom of Information Act—to which the Oklahoma Supreme Court has at times turned for clarification when interpreting the ORA, *see Oklahoma Pub. Emps. Ass’n v. State ex rel. Oklahoma Off. of Pers. Mgmt.*, 2011 OK 68, ¶ 3, 267 P.3d 838, 842—avoids this point of confusion by stating plainly that the law enforcement exemption applies not to entire agencies but to “records or information compiled for law enforcement purposes ...” 5 U.S.C.A. § 552. Thus, even assuming *arguendo* that OCCJA could be considered a law enforcement agency under the ORA, there is no justification for your decision to withhold all of the records Ms. Bailey has requested, which do not pertain to any conceivable law enforcement purpose.

Moreover, records must also be made available if “a court finds that the public interest or the interest of an individual outweighs the reason for denial.” 51 O.S. §24A.8(B). The public interest here strongly favors public access to the requested documents. OCCJA has been criticized in recent years for its lack of accountability for the more than 40 inmate deaths that have occurred in Oklahoma County Jail since 2020. This request offers an opportunity for OCCJA to publicly demonstrate that it is fulfilling its obligations under the ORA and is committed to building a stronger foundation of trust

with the public. And this letter—a good faith effort to avoid burdening the courts by litigating this point of law—offers an opportunity for OCCJA, and the taxpayers who fund it, to evade the bill for attorney fees that an Oklahoma agency unsuccessful in an attempt to fight a legitimate public records request in the courts is obliged to pay.

*The Frontier* and Ms. Bailey request that OCCJA produce the requested public records. Thank you for your consideration of this matter. I look forward to your response.

Best regards,

A handwritten signature in black ink, appearing to read "Denver Nicks". The signature is stylized and cursive.

Denver Nicks

Reporters Committee for Freedom of the Press  
Local Legal Initiative Attorney (Oklahoma)

# Exhibit F



Denver Nicks <dnicks@rcfp.org>

---

**Re: OCCJA open records request from The Frontier**

---

**Etherington, Aaron** <aaron.etherington@oklahomacounty.org>

Mon, Jan 8, 2024 at 2:05 PM

To: Denver Nicks <dnicks@rcfp.org>

Please proceed as you feel necessary.

Aaron Etherington

Assistant District Attorney

Oklahoma County District Attorney's Office

320 Robert S. Kerr, Suite 501

Oklahoma City, OK 73102

(405) 713-1600

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**From:** Denver Nicks <dnicks@rcfp.org>

**Sent:** Monday, January 8, 2024 2:04 PM

**To:** Etherington, Aaron <aaron.etherington@oklahomacounty.org>

**Subject:** [External]Re: OCCJA open records request from The Frontier

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Hi Aaron,

I'm writing to follow up on my letter in the correspondence below. I would very much like to resolve this matter, or at least part of it, without expending courthouse resources and I'm hopeful that a dialogue might help us come to an understanding and reach a solution regarding perhaps some of the public records at issue. Please respond by Monday, January 15—a week from today—and we will proceed from there.

Warm regards,

Denver Nicks

On Fri, Dec 8, 2023 at 1:28 PM Denver Nicks <dnicks@rcfp.org> wrote:

Dear Aaron Etherington,

Please see the attached letter regarding your denial of a request from The Frontier under the Open Records Act for Oklahoma County Criminal Justice Authority records.

Warm regards,

Denver Nicks

Denver Nicks  
Local Legal Initiative - Oklahoma  
1156 15th St. NW, Suite 1020 • Washington, D.C., 20005  
dnicks@rcfp.org

Need legal help? **Contact the RCFP Legal Hotline.**