



Understanding Oklahoma's Open Meeting Act and Open Records Act

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A hand in a light blue suit sleeve holds a white rectangular sign with the word "transparency" written in black lowercase letters. The sign is held against a dark grey background. The entire scene is set within a light blue frame that features a faint, classical architectural design of columns and arches on the left side.

transparency

The background of the slide features a faded, light blue image of classical architectural columns, likely from a government building, positioned on the left side. The rest of the background is a solid light blue color.

Title 25 O.S. § § 301-314

THE OPEN MEETING ACT

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Overview

- I. When the Act is Triggered
- II. What Actions Must Be Taken Before Meetings
- III. What Procedures Must Be Followed During Meetings
- IV. What Consequences May Ensur From Violations of the Act



I. When is the OMA triggered?

- When a “public body” has a “meeting,” the OMA applies.
- “Public body” and “meeting” are both defined by statute.

“Public Body” Defined

25 O.S. § 304(1)



“Public Body” Does Not Include

25 O.S. § 304(1)

- Judiciary
- Legislature
- **Administrative staff of public bodies**
(including faculty meetings and athletic staff meetings of institutions of higher ed when not meeting with public body)
- Other specific exceptions per statute, i.e. racing stewards, Council on Judicial Complaints, etc.

“Public Body” Does Not Include

25 O.S. § 304(1)

- Committees that are purely fact finding, information, recommendatory, or advisory with no decision-making authority. *Andrews v. Ind. School District No. 29 of Cleveland Co.*, 1987 OK 40, 737 P.2d 929.
- Private organizations which contract to provide goods or services to the public on behalf of a governmental agency and receive payment from public funds merely as reimbursement for goods or services provided. 2002 OK AG 37.

“Meeting” Defined

25 O.S. § 304(2)

- When conducting business of public body
- By a majority of its members
- Being personally together, OR, by teleconference, as authorized by § 307.1

NOTE: a “meeting” does not include informal gatherings of a majority of members when no business of the public body is being discussed. 25 O.S. § 304(2).

Electronic and Telephonic Communications

25 O.S. § 306



Prohibits deciding or taking action (voting) on any matter by phone or e-mail



Also prohibits deciding or taking action on any matter at an “informal gathering”



Caution! Discussion in a group e-mail can create a virtual meeting subject to the OMA.

Hypothetical: Post-Board Meeting Lunch

- Does the OMA apply?
 - Public Body
 - Meeting
- Best Practice: majority of Board members should not attend lunch together

NOTE: If member insist on the group lunch, announce it at the end of a meeting, and state that anyone is welcome to join them.

Four Types of Meetings

25 O.S. § 304(3)-(6)

Regularly
Scheduled
Meetings

Special
Meetings

Emergency
Meetings

Continued
or
Reconvened
Meetings

II. Required Pre-Meeting Actions



- Provide Notice

- Post Agenda

Provide Initial Notice of Regular Meetings

25 O.S. § 311

- **When?**
 - Annually by December 15 of regular meetings for next calendar year
 - Include date, time, and place of meetings
 - Regular meetings can be changed with 10 days notice to appropriate office, and limited new business is permitted.
- **To whom?**
 - State public bodies and governing boards of state institutions of higher education: Secretary of State
 - County public bodies: County Clerk of the county where the body is principally located
 - Municipal public bodies: Municipal Clerk

Provide Notice of Special Meeting

- 48 hours notice of date, time, and place
- Notice in writing, in person, or by telephonic means to the proper record-keeping official and to those who have filed written requests to receive notice of a meeting. 25 O.S. § 311(A)(11).
- New business is NOT permissible

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Provide Notice of Continued or Reconvened Meetings

- Date, time, and place of meeting must be announced at original meeting. 25 O.S. § 311(A)(10).
- Only matters on the original agenda may be discussed

Provide Notice of Emergency Meeting

- Public body must give only the advance public notice that is reasonable under the circumstances. 25 O.S. § 304(5).
- Give notice as soon as possible, whether in person, by phone, or website. 25 O.S. § 311(A)(12).

Post the Meeting's Agenda

25 O.S. § 311(A)(9)

- 24 hours prior to meeting, post Notice and Agenda publicly in prominent view
 - 24 hours period excludes Saturday, Sunday, and Oklahoma State holidays
 - Must be visible the entire 24 hours in advance of a meeting. 1997 OK AG 98.
 - Posted at principal office (if no office exists, posted at meeting location)
 - Public body should post regularly scheduled meetings on its website, but website posting is not an adequate substitute under the OMA. 74 O.S. § 3106.2.

Agendas

25 O.S. § 311(B)

Must contain sufficient information for the public to identify the items of business and the purpose.

Haworth Bd. of Ed. v. Havens, 637 P.2d 902, 904 (Okla. Civ. App. 1981).

“Agendas [must] be worded in plain language, directly stating the purpose . . . The language used should be simple, direct and comprehensible to a person of ordinary education and intelligence.”

Agendas

25 O.S. § 311(B)

- Cannot take action if the action is not on the agenda
- Cannot be vague
 - Ex: “Executive Director’s Report” - Needs more detail on what the report will cover.
- List *proposed* executive sessions

New Business

25 O.S. § 311(A)(9)

- “any matter not known about or which could not have been reasonably foreseen prior to the time of posting [the agenda].”
- To consider new business at a regular meeting, timely post an agenda containing an item called “new business.”
- New Business is NOT what someone forgot needed to be on the agenda
- **No New Business in a special or emergency meeting**



Caution! Use sparingly, only when not reasonably foreseeable prior to posting the agenda.

Failed Agenda Example

Agenda said purpose of the meeting was to:

1. Appoint new board member.
2. Interview a new administrator.
3. Hire principals.



The court found the agenda was deceptively vague and a willful violation where the school board hired a superintendent.

Haworth Bd. of Ed. v. Havens, 637 P.2d 902 (Okla. Civ. App. 1981).

*Best Practice: Be specific and clear. Do not vaguely refer to the action planned to be taken or discussed.

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III. During the Meeting

- Where to hold meetings
- Voting
- When executive sessions may be used
- Taking Minutes
- How to discuss new business
- How to continue or reconvene a meeting
- Public Comment

When and Where to Hold Meetings

25 O.S. § 303

- Meetings “shall be held at specified times and places which are convenient to the public”
- Use good judgment
- Not a locked courthouse on a public holiday. *Rogers v. Excise Bd.*, 1984 OK 95, 701 P.2d 754.

Voting

25 O.S. § 305

The vote of each member must be:

Publicly cast

Recorded

Section 306's prohibition on informal gatherings ensures actions are taken publicly and recorded.



Caution! Failure to meet both requirements results in the action being invalid. *Oldham v. Drummond Bd. of Ed.*, 1975 OK 147, 542 P.2d 1309.



Recording Votes

25 O.S. § 305

Must record the vote of each individual member at a meeting

- If vote is unanimous, it is sufficient to record “5-0 in favor of...” *Graybill v. Oklahoma State Bd. of Educ.*, 1978 OK 124, 585 P.2d 1358.
- However, best practice is to record how each individual voted, including yes and no votes, and whether there were any abstentions.

Minutes

25 O.S. § 312

Minutes must be written and include:

- Official summary of the proceeding
- Identification of all members present and absent
(2012 OK AG 24)
- Identification of all matters considered
- Identification of all actions taken
- Should reflect manner and time notice was given
- Any person may record the meeting, provided it does not interfere with the meeting

Note: Minutes of public meetings are open to the public.

Minutes

25 O.S. § 312

- Minutes must be taken in Executive Session
 - *Berry v. Bd. of Gov. of Registered Dentists*, 1980 OK 45, 611 P.2d 628.
 - However, minutes taken in Executive Session may be kept confidential under the Open Records Act. 51 O.S. § 24A.5(1)(b).
- Minutes for Emergency Meetings: § 312(B)
 - Must state nature of emergency
 - Must include reasons for declaring emergency meeting

Executive Sessions

25 O.S. § 307

- **General Rule:** No executive sessions unless specifically authorized in § 307 or another statute.
- **Limited Permissible Purposes:**
 - Personnel matters (25 O.S. § 307(B)(1))- construed narrowly
 - Not job openings (2006 OK AG 17)
 - Not hiring independent contractors (2005 OK AG 29)
 - Must identify individual or unique position (1997 OK AG 61)
 - Purchase or appraisal of real property (25 O.S. § 307(B)(3))
 - Confidential communications with attorney concerning pending investigation, claim or action (25 O.S. § 307(B)(4))
 - Other specific instances

Executive Sessions

25 O.S. § 307

- **Special Procedures: 25 O.S. § 307(E)**
 - *Proposed* executive session must be noted on agenda (25 O.S. § 311(B) and 82 OK AG 114)
 - Include specific citation to which provision of § 307 authorizes the executive session. (25 O.S. § 311(B)(2)(C))
 - Must take vote at the meeting to go into executive session and have majority to convene executive session. (25 O.S. § 307(E)(2))*

Executive Sessions

25 O.S. § 307

- **Special Procedures: 25 O.S. § 307(E)**
 - Votes cannot be taken in executive session.
 - Can discuss, but actions arising out of executive session must be taken in an open meeting.
 - Must take and keep minutes (i.e. what happened, who was there). *Berry v. Bd. of Gov. of Registered Dentists*, 1980 OK 45, 611 P.2d 628.
 - Must vote to come out of executive session and record those votes publicly

Executive Session Agenda Item (example 1)

Proposed executive session: Possible discussion and vote to enter Executive Session *pursuant to 307(B)(4)*¹ for confidential communications between Board and its attorney concerning the *pending tort claim filed by John Doe*² against the Board, where the Board's attorney has determined disclosure *will seriously impair* the ability of the Board to process the claim in the public interest.³

1. *State applicable 307(B) provision (§ 311(B)(2)(c))*
2. *Identify the claim, investigation, or proceeding.*
3. *Board's attorney must make determination if 307(B)(4) used.*

Executive Session Agenda Item (example 2)

Proposed executive session: Possible discussion and vote to enter Executive Session *pursuant to 25 O.S. § 307(B)(1)*¹ to discuss annual review of Executive Director and *possible merit raise increase*² for Executive Director.³

1. *Citation to specific 307(B) provision (§ 311(B)(2)(c))*
2. *Salary and evaluations can be discussed in Executive Session (1996 OK AG 40)*
3. *Name or unique position identified. (1997 OK AG 61)*

How to Enter Executive Session

- Example: Board wants to conduct an annual evaluation of its Executive Director Jane Jones.
- Procedure under OMA?

How to Enter Executive Session

1. Post an agenda referring to “proposed executive session to discuss and conduct annual evaluation of Executive Director Jane Jones,” citing 25 O.S. § 307(B)(1) as the statutory authority for this executive session.
2. A majority vote in an open meeting by a quorum of board members to hold the proposed executive session.

How to Enter Executive Session

3. Conduct an executive session that conforms to the description set forth in the agenda (i.e. a discussion regarding the matter referred to in the agenda, minutes taken)

4. Vote to come back to the open meeting and take a recorded vote of any action regarding subject of the proposed executive session.

Public Comments

- A public body is not required to provide opportunity for citizens to speak (2002 OK AG 26; 1998 OK AG 45).
 - If public body chooses to allow public comments, it is advisable to set policy.
 - Could limit comments to agenda items only and/or set a time limit.
 - Public body should be careful not to discuss topics on the agenda during public comment portion of meeting.



How to Continue or Reconvene a Meeting

25 O.S. § 311(A)(10)

- Purpose: to finish business appearing on an agenda of a previous meeting
- At original meeting, announce date, time, and place of continued/reconvened meeting.
- At the continued/reconvened meeting, only matters on the agenda of the previous meeting may be discussed.
- No New Business

How to Hold a Special Meeting

25 O.S. § 311(A)(11)

- “any meeting of a public body other than a regular scheduled meeting or emergency meeting” § 304(4)
- Give proper public notice at least 48 hours in advance
- No New Business

How to Hold an Emergency Meeting

25 O.S. § 311(A)(12)

- Meeting convened to deal with an emergency
 - Which is a “situation involving injury to persons or injury and damage to public or personal property or immediate financial loss,” when it would be impractical to wait until a special meeting can be set. § 304(5)
- Give as much advance public notice as is reasonable and possible under the circumstances
- No New Business

Teleconference

25 O.S. § 307.1

- Permissible, but certain conditions must be met:
 - Audio **and** visual at each site- “videoconference”
 - Must have quorum of public body at agenda site
 - Notice and agenda must list video sites
 - Notice and agenda must identify each member and site from which each will participate
 - Off-site location must be in district
 - Public must have access to all sites, including the off-site location
 - No executive sessions



IV. Willful Violations of the Act

Civil Implications

- Actions taken in willful violation are invalid. 25 O.S. § 313.
- Minutes of an Executive Session will be made public where the OMA is willfully violated. 25 O.S. § 307(F)(2).
- *Any person* can bring a civil action. 25 O.S. § 314(B).

Criminal Penalty

- Misdemeanor offense
- Punishable by fine up to \$500 and/or up to one (1) year in the county jail. 25 O.S. § 314.

Willful Violation

Rogers v. Excise Bd. of Greer County,
1984 OK 95, 701 P.2d 754.

“The Act provides that any action taken in willful violation shall be invalid. Willfulness does not require a showing of bad faith, malice, or wantonness, but rather, encompasses conscious, purposeful violations of law or **blatant or deliberate disregard of the law by those who know, or should know . . .** Notice of meetings of public bodies which are deceptively vague or likely to mislead constitute a willful violation.”

How to Correct an OMA Mistake

- If not in compliance with OMA when an action is taken, it will be invalid.
- However, to validate the action, a public body can later ratify the decision.
- How? Depends on the type of mistake.
 - Give proper public notice and put item on next meeting's agenda
 - Re-vote and record the decision in the public meeting

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Title 51 O.S. §§ 24A.1-24A.30

THE OPEN RECORDS ACT



The Purpose of the ORA

51 O.S. § 24A.1-24A.30

Oklahoma citizens have an “inherent right to know and be fully informed about their government . . . so they may efficiently and intelligently exercise their inherent political power.”

51 O.S. § 24A.2

What makes a record public?

51 O.S. § 24A.3 (1)

- **Where:** Created by, received by, under the authority of, or coming into the custody, control or possession of
- **Who:** Public official, public body, or their representatives
- **What:** In connection with
- **When:**
 - The transaction of public business,
 - The expenditure of public funds, or
 - The administering of public property

Public Bodies and Public Officials

Public officials:
official or
employee of any
public body

Public bodies: any
office, municipality,
or school district,
supported in whole
or in part with public
funds or
administering or
operating public
property.*

Their
Representatives

*Exclusions: judges,
justices, Council on
Judicial Complaints,
the Legislature, or
legislators.

51 O.S. § 24A.3 (1)

What is NOT a record?

51 O.S. § 24A.3(1)(a)-(h)

- Computer software
- Personal effects
- Personal financial info
- GPS records of the Transportation Authority
- Toll collection videos
- Personal information given as a guest at a state park
- Specific Department of Defense forms
- Information in connection with a driver's license application
- Personal information within driver's records
- Request for information

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What is a Record?

51 O.S. § 24A.3 (1)

All documents, including:

- Books, papers, photographs, microfilm, certain data files, computer tape, disks, records, sound or film recordings, video recordings, emails and text messages (2009 OK AG 12).

*Note: Nothing in the ORA imposes any new recordkeeping requirements or any additional timeline for maintaining records.

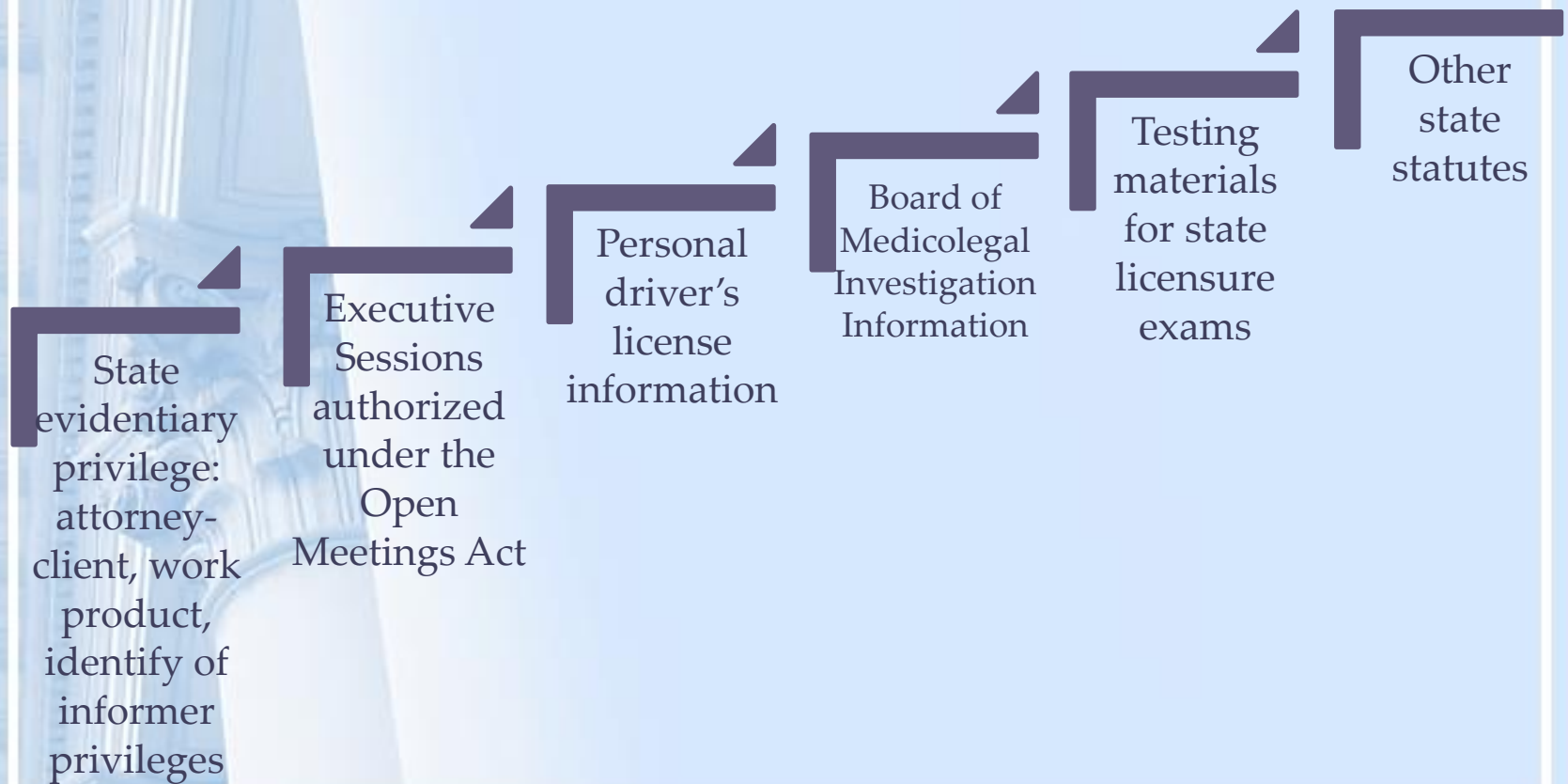
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When a record meets these broad definitions, it is
OPEN.

An open record may, nonetheless, be shielded from disclosure if a specific exemption or exception applies.

Exemptions are records specifically required by law to be kept confidential.

51 O.S. § 24A.5





Redaction

51 O.S. § 24A.5(3)

Sometimes the entire record will be exempt, but if redaction is possible, the reasonably segregable portion of a record containing exempt material shall be provided after the exempt portion has been removed.

Most Common State Evidentiary Privileges and the ORA

The **Attorney-Client Privilege** generally protects communications made in confidence between privileged persons for the purpose of seeking, obtaining, or providing legal assistance for the client. 12 O.S. § 2502(A)(5).

***Note:** The attorney-client privilege for public officers or government agencies is more limited than a private client. Government clients only enjoy the privilege when the communication concerns a pending investigation, claim, or action, when disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest. 12 O.S. § 2502(D)(7).

Most Common State Evidentiary Privileges and the ORA

The **attorney work-product privilege** protects certain materials prepared in anticipation of litigation from being disclosed.

Application of this privilege “requires distinguishing between (1) communications and things prepared in anticipation of litigation or for trial by or for another party or by or for the representative of that other party, etc., that may be discoverable and (2) the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation, of which a court shall protect against disclosure.”

Scott v. Peterson, 2005 OK 84, ¶ 8, 126 P.3d 1232, 1235.

Exceptions

The Act applies, but these records are specifically excluded from disclosure under the ORA.

Certain Law
Enforcement
Records

Litigation Files
& Investigatory
Reports

Personal Notes

Certain
Personnel
Records

Federal
Records

Information
Related to
Terrorism



Law Enforcement Records

51 O.S. § 24A.8

Generally speaking, law enforcement agencies may deny access to law enforcement records except where required by other state or local law or where a court finds that the public interest or the interest of an individual outweighs the reason for denial.

However, the Act provides 9 categories of law enforcement records that **MUST** be made available for inspection *if kept*.

Law Enforcement Records

51 O.S. § 24A.8



Law Enforcement Records

51 O.S. § 24A.8

Generally, unless a law enforcement record is made open by § 24A.8(A) or by another state or local law, access to the record may be denied. 51 O.S. § 24A.8(B).

- Pleadings in a criminal case may be kept confidential, until filed with the court clerk (unless sealed or otherwise protected). See, e.g., 22 O.S. § 385.
- Traffic collision reports may be withheld for up to 60 days, but the reports shall be made available as soon as practicable upon request to certain individuals (parties involved in the collision and their legal counsel, law enforcement agency, newspaper, radio, television broadcaster, etc.). 47 O.S. § 40-102; *Cummings*, 1993 OK 36, 849 P.2d 1087.
- Dash/Body-mounted camera footage is an OPEN RECORD, but may be subject to redaction pursuant to § 24A.8(A)(9) and (10). See *Ward & Lee, P.L.C. v. City of Claremore*, 2014 OK CIV APP 1, 316 P.3d 225.

Litigation Files & Investigatory Reports

51 O.S. § 24A.12

“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.”



The background of the slide features a faint, blue-tinted image of classical architectural columns, likely from a government building or courthouse, set against a light blue background. The columns are on the left side, receding into the distance.

Litigation Files & Investigatory Reports

But see § 24A.20:

“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.”

Personnel Records

Section 24A.7

Public bodies may keep personnel records confidential in two situations:



1. Internal Personnel Investigations
2. When disclosure would warrant an invasion of personal privacy. § 24A.7(A)(2).

Personnel Records

Section 24A.7

Public bodies should utilize a balancing test weighing the public's right to know against the employee's right to privacy

- Protected from disclosure: place of birth, birthdate, date of marriage, employee ID number. *Oklahoma Pub. Employees Ass'n v. State ex rel. Oklahoma Office of Pers. Mgmt.*, 2011 OK 68, ¶ 39, 267 P.3d 838, 852.
- However, can disclose dates of employment, title, position, final disciplinary action

Personal Notes

Section 24A.9

A public official may keep confidential his or her personal notes and personally created materials **prior to taking action:**

- Prior to making a recommendation, or
- Prior to issuing a report



Caution! Consider disposition schedule: duty to maintain records for a set period of time.

Voluntarily Supplied Information

Section 24A.10

Information or records voluntarily supplied to any state agency, board, or commission shall be subject to full disclosure.

*Exception if disclosure would give an unfair advantage to competitors or bidders in certain situations delineated in Section 24A.10(B).



Federal Records

Section 24A.13

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

A Few More Exceptions to Note

Information relating to terrorism may be kept confidential. 51 O.S. § 24A.28.

A **Protective Order** withholding material from the public must include: (1) statement from the court, (2) specific identification of material to be withheld, and (3) a Confidential stamp or label. 51 O.S. § 24A.29.

Court records are open, unless the court seals the record or a portion of it. To seal the record, the court must find a “compelling privacy interest exists which outweighs the public’s interest in the record.” The order sealing the record must be public and must make specific findings of fact and conclusions of law. 51 O.S. § 24A.30.

CLEET and the Department of Public Safety shall keep certain law enforcement training records confidential. 51 O.S. § 24A.8.

Disclosure

Section 24A.5

Open to any
person

Inspection,
copying,
and/or
mechanical
reproduction

During
regular
business
hours

Not required
to create a
record or
format that
does not exist

Disclosure

Reasonable procedures may be implemented to protect the integrity and organization of records and to prevent excessive disruption of essential functions. Section 24A.5(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 regular business hours of the public body. Section 24A.5(7).

Special considerations given to public bodies maintaining less than 30 hours of regular business per week. Section 24A.6.

Charging Fees

Section 24A.5(4)

- The reasonable fee for direct cost of searching and copying records may be charged if:
 - *The request is for solely commercial purposes; or*
 - *It would clearly cause excessive disruption of the essential functions of the public body.*
- Recovery of the reasonable, direct costs of record copying or mechanical reproduction is also permitted
- Not in excess of 25¢ per page for 8 ½ x 14” or smaller
- Not in excess of \$1 for a certified copy

In no case shall a search fee be charged when the release of records is in the public interest or to news media.

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Charging Fees: Media Exception

Section 24A.5(4)(b)

- Publication by media for news purposes shall not constitute commercial purpose; and
- The charge for providing copies of electronic data to the media for a news purpose shall not exceed the **direct cost of copying.**



Charging Fees: Notice of Fees

Section 24A.5(4)(b)

Written fee schedule must be posted at principal office and with the county clerk.

Timeline for Responses

Section 24A5(6)

- Prompt
- Reasonable access

*Note Nov. 1, 2017 amendment to this subsection addressing delays



Penalties

Section 24A.17

Public official + willful violation= **misdemeanor**

- Fine of up to \$500,
- Imprisonment in the county jail for up to 1 year,
- or both fine and imprisonment

Any person denied access may file:

- a civil suit for declarative or injunctive relief, or both
- BUT, suit is limited to the records requested and denied prior to filing,
- plus, if successful, reasonable attorney fees

A public body/official is entitled to reasonable attorney fees if the suit is successfully defended and found clearly frivolous.



Thank You

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