Public Records in Oklahoma

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During World War II, Winston Churchill made one of his many trips to the United States to visit the President at the White House. Desiring to speak with the Prime Minister, President Roosevelt wheeled himself into the room in which Mr. Churchill was staying. He found Churchill emerging naked from the bathtub. Embarrassed, the President apologized profusely but Churchill halted his apologies by stating, "the Prime Minister of Great Britain has nothing to hide from the President of the United States."

Public perception of those of us in government is that we do have much to hide from the people we serve. Public demand for access to government information has grown remarkably in the years since Watergate. Recognizing this and in an effort to curb such cynicism, the Oklahoma Legislature in 1985 enacted comprehensive open records legislation. The stated purpose of the legislation 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." 51 O.S.2011, § 24A.2. The legislation is codified as the Open Records Act, 51 O.S.2011, §§ 24A.1 to 24A.29, hereinafter referred to as the "ORA" or "Act."

The result of this Act is to make many a public servant who must apply the law feel truly naked and uncertain. The intent of this article is to provide an overview of the basic principles and requirements of the ORA and to offer a guide to the proper analysis for its application. Although the ORA has been broadly drafted and its language is fairly straightforward, great difficulty arises when seeking to apply the Act to everyday record requests.

Is the Entity a Public Body?

The first step in determining whether a duty exists to disclose information under the ORA is to ask whether the entity is a public body. Under the definition provided by the ORA at Section 24A.3(2), a public body may take various forms ranging from an agency or commission to a task force or even a study group. The central issue for determining whether an entity is a public body is to determine whether the entity is ***"supported in whole or in part by public funds or entrusted with the expenditure of public funds or administering or operating public property . . . ."*** 51 O.S.2011, § 24A.3(2) (emphasis added). However, merely doing business with the State is not ordinarily considered sufficient to turn a private entity into a public body.

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Questions arise as to whether a private physician must disclose a patient's medical record or whether an attorney has a duty to provide a client with a litigation file pursuant to the Open Records Act. Because these are private corporations or individuals who are not supported in whole or in part by public funds, no duty exists to release the records pursuant to the Open Records Act. Although the Act includes almost every conceivable type of public entity, the ORA specifically excludes the Legislature, legislators, judges, justices, and the Council on Judicial Complaints; they must, however, disclose financial information pursuant to Section 24A.4. *See id.* § 24A.3(2).

Is the Information a Record?

If the entity does fit the description of a public body, the second important question is whether the information sought is a public record. Again, a record may take many forms, from specific paper documents, electronic communications or photographic materials to video or other types of film or sound recordings. To rise to the level of a public record, the information sought must have been "created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives . . . ." *Id.* § 24A.3(1). The statute requires all public bodies and officials to keep and maintain all business and financial transactions conducted by a public body. *See* 51 O.S.2011, § 24A.4. The issue of custody or control of a record has also been addressed in Section 24A.20, which provides, "[a]ccess 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." So, even if a public body has transferred possession of its records, it is still deemed to be in "control and possession" of the records for ORA disclosure purposes. *See Saxon v. Macy*, 795 P.2d 101 (Okla. 1990).

The next step is to determine whether the information sought, in whatever form, has to do with the ***"transaction of public business, the expenditure of public funds or the administering of public property."*** 51 O.S.2011, § 24A.3(1) (emphasis added). In a case construing portions of the ORA, the Oklahoma Supreme Court stated, "[t]he Act includes a definitional section of sufficient breadth to encompass virtually every governmental body and record." *Milton v. Hayes*, 770 P.2d 14, 15 (Okla. 1989). For example, e-mails, text messages, and other electronic communications may constitute records as defined in the ORA, regardless of whether they are created or received on publicly or privately owned equipment. *See* A.G. Opin. 09-12.

A record is not, however, nongovernmental personal effects or personal financial statements submitted to a public for the purpose of obtaining a license or becoming qualified to contract with a public body, unless the law otherwise

requires disclosure. 51 O.S.2011, § 24A.3(1). The language defining what is "not" a record has been amended several times, most recently in 2006 to include records in connection with a Motor Vehicle Report, personal information within driver records, and audio or video recordings of the Department of Public Safety. *Id.* § 24A.3(1)(h).

What Records Must be Disclosed?

Having determined that the entity is a public body and the information sought is a public record, the next question is whether the record is open to the public. This question is specifically addressed in Section 24A.5 of Title 51, which provides that "[a]ll records of public bodies and public officials shall be open to any person for inspection, copying, and/or mechanical reproduction . . . ." *Id.*

The only exception occurs when the ORA, or other State or federal statute, provides a confidential privilege so far as a particular record is concerned. *See id.* § 24A.2. The burden to establish that the record may or may not be kept confidential is upon the person or public body wanting to keep the record confidential. *See id*. "Any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions . . . ." *Id.* § 24A.5(2).

Exemptions to Disclosure Under the Act

1. Privileged Information

Section 24A.5(1) lists, in part, records that are to be kept confidential. The section commences with the general statement that ***all*** records must be disclosed, but further provides:

> The Oklahoma Open Records Act . . . does not apply to records specifically required by law to be kept confidential including:
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> 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, or
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> 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,
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> c. personal information within driver records as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, or
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> 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.

Id. The evidentiary privileges can be found at 12 O.S.2011, §§ 2501 to 2513. It is important to note that the attorney-client privilege for the government client is more limited than for a private client.

2. Personnel Records

There are certain personnel records that may be kept confidential at the discretion of the public body. Section 24A.7(A) of Title 51 provides that records may be kept 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 . . . .

Id. (emphasis added.)

For example, under these provisions a potential employer may be unable to obtain records regarding a public employee's evaluation, certain disciplinary actions, promotion or resignation. If a person applied for a job with a State agency but was ***not*** hired, the employment application submitted, although in the public body's possession, may be kept confidential. The United States Supreme Court has said an "unwarranted invasion" occurs when disclosure of private information does not further the core purpose of letting citizens know what their government is up to. *See United States Dep't of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487, 497 (1994) (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press,* 489 U.S. 749, 773 (1989)).

Other personnel records not specifically listed in Section 24A.7(A) of Title 51 must be made available for public inspection. The types of personnel records which must be disclosed are the employment applications of those who become public officials or employees, gross receipts of public funds, dates of employment, title and position and any final disciplinary action which results in the loss of pay, demotion, suspension or termination. *See id.* § 24A.7(B).

The Oklahoma Personnel Act provides that current and former State employee home addresses, telephone numbers, social security numbers and information related to personal electronic communication devices shall not be open to public inspection or disclosure. *See* 74 O.S.2011, § 840-2.11. The ORA

also requires that the home addresses, telephone numbers, and social security numbers of current or former employees of public bodies must be kept confidential. *See* 51 O.S.2011, § 24A.7(D).

3. Law Enforcement Records

A law enforcement agency is defined in the Act as "any public body charged with enforcing state or local criminal laws and initiating criminal prosecutions . . . ." *Id.* § 24A.3(5). In this area the Act provides a specific laundry list of law enforcement information which must be provided to the public. *See id.* § 24A.8(A). The public may access a chronological list of all incidents, arrestee descriptions, facts concerning arrests, conviction information, disposition of all warrants, departmental crime summaries, radio logs and jail registers. *See id.* § 24A.8(A). Law enforcement information not specifically listed in subsection A of Section 24A.8 may be kept confidential by the law enforcement agency ***unless*** a court finds that the public interest or the interest of an individual outweighs the reason for denial. *See id.* § 24A.8(B). However, Section 24A.8 specifically limits this privilege to "law enforcement records." Other records would be subject to inspection and disclosure pursuant to the ORA.

As to how courts have interpreted this section, see *Transportation Information Servives, Inc. v. State ex rel. Department of Corrections,* 970 P.2d 166 (Okla. 1998) (holding that the commercial corporation was entitled to seven years' worth of public offender records without having to supply individual inmates' names); *Cummings & Associates v. Oklahoma City*, 849 P.2d 1087, 1089 (Okla. 1993) (finding that traffic collision reports are not within one of the eight categories of law enforcement records in Section 24A.8(A) that must be made available to the public, and may, therefore, be kept confidential unless a court pursuant to Section 24A.8(B) finds that the public interest or interest of the individual outweighs the reason for denial); *Primas v. City of Oklahoma City*, 958 F.2d 1506, 1511 (10th Cir. 1992) (holding that duty to produce records under the Act is that of law enforcement agency, not police officer).

4. Personal Notes and Materials

Section 24A.9 of the ORA states generally that "[p]rior 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." It can be difficult, however, to determine whether a document is an official's or employee's personal material, rather than a public body's record.

In the only case construing Section 24A.9, the Court of Civil Appeals ignored the "prior to taking action" language and held that a public body must disclose a draft audit report. Focusing on the "totality of the circumstances surrounding the creation, maintenance, and use of the document," the court noted that the draft report was not an individual's personal material because

the public body possessed, controlled, and used it to prepare for a hearing; the report was therefore subject to disclosure under the ORA regardless of its status as "preliminary" or "final." *Int'l Union of Police Ass'ns v. City of Lawton*, 227 P.3d 164, 168 (Okla. Civ. App. 2009).

While this case is persuasive authority rather than precedential, the court's narrow definition of what is "personal" indicates that materials originally created to aid one official or employee, when circulated and used within a public body, may become subject to disclosure even if they are not intended to be a final product.

5. Proprietary Information

A public body may keep confidential information relating to bid specifications, contents of sealed bids, or computer programs or software, if such disclosure would give an unfair advantage to competitors or bidders. *See* 51 O.S.2011, § 24A.10(B). Also, a public body may refrain from disclosing real estate appraisals prior to awarding a contract, as well as the prospective location of a private business or industry prior to public disclosure. *See id.* § 24A.10(B)(4), (5). Further, subsection C protects from disclosure information submitted by persons or entities seeking economic advice from the Departments of Commerce and Career and Technology Education, the technology center school districts, and the Oklahoma Film and Music Office. *See id.* § 24A.10(C). Similarly, the Department of Agriculture may not individually identify the providers of confidential crop and livestock reports. *See id.* § 24A.15. The Oklahoma Medical Center may keep confidential its market research data. *See id.* § 24A.10a.

6. Donor Privacy

A public body may keep confidential any information that would reveal the identity of an individual who lawfully makes a donation to or on behalf of a public body. *See id.* § 24A.11(A); A.G. Opin. 02-27. If the donation consists of tax-deductible library, archive, or museum materials, the date of the donation, its appraised value and a general description of the gift may be released. *See* 51 O.S.2011, § 24A.11(B). Agencies and institutions of the state Higher Education system may keep all information pertaining to donors and prospective donors confidential. *Id.* § 24A.16a.

7. Citizen Complaints

The Act protects the confidentiality of citizen complaints. Public officials may keep confidential personal communications which are received from persons exercising rights secured by the Federal and/or State Constitution. However, if a public official responds in writing to this personal communication, the public official's response may be kept confidential only to the extent needed to protect the identity of the person making the original communication. *See id.* § 24A.14; A.G. Opins. 88-79; 88-87.

8. Educational Information

The Act provides for the confidentiality of individual student records, teacher lesson plans, tests and other teaching materials, and personal communications concerning individual students of public educational institutions. *See* 51 O.S.2011, § 24A.16(A). "If kept, statistical information not identified with a particular student and directory information shall be open for inspection and copying." *Id.* § 24A.16(B). "Directory information" may include a student's name, address, telephone listing, date and place of birth, major field of study, participation in school activities, dates of attendance, degrees received, and most recent previous educational institution attended. Students and parents must be provided a reasonable opportunity to object to disclosure of directory information before it may be released. *See id.*; A.G. Opins. 88-33; 86-152; 85-167.

For an analysis of a question concerning student records to be complete, 20 U.S.C. § 1232g, commonly referred to as the Buckley Amendment and known as the Family Educational Rights and Privacy Act of 1974, must be consulted.

9. Investigation and Litigation Files

The Act permits the Attorney General, District Attorneys, municipal attorneys and agency attorneys authorized by law, to keep confidential their litigation files and investigatory reports. *See* 51 O.S.2011, § 24A.12. Unfortunately, the Act does not address the investigatory reports of agencies not authorized to have an attorney. (However, records concerning internal personnel investigations may be kept confidential pursuant to Section 24A.7(A)(1)). If the record is subject to disclosure, a law enforcement agency may deny access to records in investigation files if the records are accessible at another public body. *See id.* § 24A.20. The fact that an agency transfers the record to another public body or public official for investigatory or litigation purposes does not exempt it from release if it would otherwise be subject to disclosure. *See id.*

Implementation Of The ORA

The ORA attempts to balance public access to information with the orderly maintenance of public business. A public body must designate a person who is authorized to release records to the public. This person must be available to provide access for inspection and release of records during regular business hours. *See* 51 O.S.2011, § 24A.5(6). The Act commands a public body to provide prompt, reasonable access to its records, but the public body may adopt "reasonable procedures" for the review and release of its records. *Id.* § 24A.5(5).

It is important to note that the public body may set up its own procedures to protect its public records and to prevent record requests from causing "excessive disruptions of [the public body's] essential functions." *Id.* § 24A.5(5); *see* A.G. Opin. 85-36 (specifically addressing electronically stored information,

i.e., computer tape or disk, but applicable to records in all types of formats as contemplated by this subsection); *see also* A.G. Opin. 06-35. A public body may require a form to be filled out before a records request is processed, but cannot use its procedures or such a form as obstacles to disclosure. *See* A.G. Opin. 99-55.

Except for records required by Section 24A.4 of Title 51 (regarding the receipt and expenditure of public funds by public bodies and officials), the Act does not impose any additional record keeping duties on a public body. *See* 51 O.S.2011, § 24A.18. For example, if a citizen requests the names and addresses of all agency employees who have children in child care facilities, must the agency compile such information for the requestor? Under Section 24A.18, the agency does not have a duty to create a record if it is not already in existence. Additionally, the Act's definition of a public record presumes that the government information has been reduced to some form.

Fees That May be Charged

A major area of controversy in the Act involves charging copying or reproduction fees and search fees. With respect to copying fees, a public body may not charge more than 25 cents per page for copies of documents having the dimensions of 8½ by 14 inches or smaller, or $1.00 per page for certified copies of documents. *See id.* § 24A.5(3). The only exception is if the request is for records containing individual records of persons. In that instance, the copying or certifying fee is set by the statute specifically addressing such fees for the particular records in question (*e.g.*, records in the custody of court clerks, *see* 28 O.S.2011, § 31). *See* A.G. Opin. 09-27.

Reproduction Fees

Reproduction fees are relevant when the record is requested in video, audio, computer tape or disk format. Section 24A.5(3) of Title 51 provides that "a public body may charge a fee only for recovery of the ***reasonable, direct costs*** of document copying, or ***mechanical reproduction***." *Id.* (emphasis added.) This is the only language in the Act that arguably even contemplates the fees that may be charged for reproducing records in these formats, and then only in a general manner (unlike the language that establishes specific fees for copying paper documents). The issue then is, what are the reasonable and direct costs of providing copies of public records in these formats?

In providing advice on this issue to State agencies and officials, the Attorney General has considered the legislative admonition that fees such as reproduction fees are not to "be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information." *Id.* § 24A.5(3). In view of this, and the rule of statutory construction holding that words in a statute are to be given their plain, ordinary meaning unless a contrary intention appears,

the Attorney General has advised State agencies and officials that they may recover the costs of materials and labor specifically incurred in reproducing the particular record requested in one of these formats or another non-paper format. *See* A.G. Opin. 96-26.

In application, this has meant that a State agency could charge a requestor 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 agency for the request; (3) any hardware or software specifically required to fulfill the request which would not otherwise generally be required or used by the agency, but used in reproducing the record requested in a machine-readable format; and (4) the cost of labor used in providing the record.

The agency would not, however, be able to charge for: (1) hardware or software or a percentage thereof which is otherwise generally required or used by the agency for day-to-day operations; (2) storage, processing or access charges not specifically identified to the request; or (3) maintenance and materials required not directly resulting from the request. In the context of a request for a paper record, this is like an agency being unable to charge for: (1) a percentage of the typewriter or copying machine cost used to make the copies; (2) the cost of archiving and storing the records; or (3) the cost of fixing a copier which broke while copying a record.

The Attorney General's advice on this issue proceeded from a decision of the Oklahoma Supreme Court. In *Merrill v. Oklahoma Tax Commission*, 831 P.2d 634, 642-43 (Okla. 1992), the court affirmed that a reproduction charge "based upon the cost of materials [and] labor needed for providing the computer program and service to produce the requested data" was legal. Undoubtedly, questions concerning reproduction fees for records in non-paper formats will continue to occur. Charging for costs directly related to responding to such a request, and not for costs which are indirect or remote, should provide a safe harbor for a public body.

Search Fees

A public body may charge a "search fee" only when the information sought is "solely for commercial purpose" or when the information requested would clearly cause an "excessive disruption of the public body's essential functions." 51 O.S.2011, § 24A.5(3). In *Merrill*, the Oklahoma Supreme Court affirmed that both factors were present. *See Merrill*, 831 P.2d at 642. Therefore, the Oklahoma Tax Commission, the agency from which the records were sought, was authorized to charge search fees in the form of certain labor and administrative costs incurred in responding to the records request. (The issue of search fees should not be confused with the issue of reproduction fees in *Merrill*. It is clear that the court addressed each issue separately and found the factors pres-

ent allowing search fees (*id.* at 642) and the evidence necessary to uphold the reproduction costs as reasonable and direct (*id.* at 642-43).)

Even with *Merrill*, this is an area in which an agency should proceed carefully. Section 24A.5(3) of the Act authorizes a search fee, but cautions:

> In no case shall a search fee be charged when the release of said documents 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.

Id. This language makes clear that search fees will be tolerated in very few circumstances. This particular provision was at issue in *Merrill*, and the court affirmed that the private attorney's request for records was "solely for commercial purposes," his law practice, and not to determine whether the Tax Commission was "honestly, faithfully, and competently performing [its] duties." *Merrill*, 831 P.2d at 642 (*Cf.* A.G. Opin. 88-35, in which the Attorney General opined that pursuant to Section 24A.5(3) a search fee may not be charged to a member of the news media.)

What of Individual Privacy Rights?

The Act specifically provides that the exceptions to disclosure established in the ORA, together with other State and federal law, adequately protect individual privacy interests. *See* 51 O.S.2011, § 24A.2. The Legislature allows public bodies to determine whether the release of documents regarding employee evaluations or payroll deductions is an invasion of personal privacy. Yet, the ORA states, "[e]xcept 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[.]" *Id.* § 24A.2.

The Oklahoma Supreme Court reviewed this issue in *City of Lawton v. Moore*, 868 P.2d 690, 693 (Okla. 1993). In *Moore*, the court held that the City of Lawton had no duty to give notice and an opportunity to be heard to persons whose interest would be affected by disclosure of public records. In so holding, the court expressly recognized that amendments to the Act in 1988 had overruled *Tulsa Tribune Co. v. Oklahoma Horse Racing Commission*, 735 P.2d 548 (Okla. 1987), in which the court had imposed such a duty on custodians of public records.

In sum, a public body seeking to keep a record confidential always bears the burden of establishing a statutory reason for doing so. 51 O.S.2011, § 24A.2.

Penalties For Violation of the Act

The ORA provides that a public official's "willful" violation of any provision of the Act is a misdemeanor punishable by a fine of up to $500.00 or imprisonment in the county jail for a period not to exceed one year, or both. 51 O.S.2011, § 24A.17(A). A person who is improperly denied access to a record may bring a civil suit for declaratory or injunctive relief and may be awarded attorney fees if successful. *See id.* § 24A.17(B).

Finally, in keeping with the legislatively-created presumption that all records of a public body are open, a public body or public official is not civilly liable for damages resulting from disclosure of records pursuant to the Open Records Act. *See id.* § 24A.17(D).

Attorney General Opinions Regarding The ORA

A.G. Opin. 85-36:

One of the most sensitive areas of records access involves electronically stored information. This Opinion held that the Oklahoma Secretary of State need not allow commercial entities on-line access to computerized data absent reasonable assurances that the records involved can be fully preserved and safeguarded from destruction, mutilation and alteration.

A.G. Opin. 85-167:

The Attorney General harmonized the State law regarding "directory information," as defined by Section 24A.16(B) of Title 51, with federal statutes requiring school districts to notify students' parents prior to making such information available to disclosure. This Opinion filled a major gap in the law resulting from the omission of this important safeguard in Oklahoma's adoption of language from the Federal Family Educational Rights and Privacy Act of 1974 (hereafter referred to as "FERPA," is also known as the "Buckley Amendment"). This problem was corrected by the Oklahoma Legislature in 1986 when it cast Section 24A.16(B) in its present form.

A.G. Opin. 86-69:

This Opinion resolved an apparent conflict in the law between an employee's right to see his/her own personnel file (*see* § 24A.7(C)) and the confidentiality of information the Oklahoma State Bureau of Investigation had obtained as part of a "background investigation of the employee." In this circumstance, the balance tips in favor of employee access to the personnel file unless the legitimate privacy interests of "confidential informers" are involved.

A.G. Opin. 86-152:

Existing lists of ***former*** college students come within the ambit of the ORA subject to several caveats: that the disclosures are limited to directory information as defined in the Act; that the disclosure of information made confidential by FERPA is not permitted; and, that the rights of individuals who have made known their objection to such disclosure be protected.

A.G. Opin. 88-33:

This Opinion addresses the question of whether the Council on Law Enforcement Education and Training ("CLEET") is a public education institution within the meaning of the Open Records Act and, whether CLEET is required to disclose the list of names and addresses of persons applying for or holding investigation or security licenses. *See* §§ 24A.16; 24A.7(A). CLEET does fall within the definition provided by the Act for a public education institution. However, the Oklahoma Security Guard and Private Investigator Act, 59 O.S.1988, §§ 1750.1 - 1750.14, as amended, requires that application information pertaining to those licensed by CLEET remain confidential unless otherwise ordered by a court.

A.G. Opin. 88-35:

Under the clear reading of Section 24A.5(3), a public body may not charge a search fee to a member of the news media who is seeking information in the public interest.

A.G. Opin. 88-79:

This Attorney General Opinion answered the question of whether a written complaint filed by a citizen with the State Dental Board may remain confidential pursuant to Section 24A.14 of the Open Records Act. The Opinion concluded that such a complaint was a personal communication which could remain confidential to the extent necessary to protect the identity of the person making the complaint.

A.G. Opin. 88-87:

Letters written to the Pardon and Parole Board regarding clemency considerations of inmates are confidential personal communications pursuant to Section 24A.14 of the ORA. Such letters are considered to be "personal communications" of a person exercising constitutionally secured rights, and therefore, are deemed confidential communications.

A.G. Opin. 93-2:

Addressing the destruction of tape records in the Treasurer's Office, A.G. Opin. 93-2 affirmed the clear statutory language that audio recordings are records under the Act. The Opinion found that recordings made in connection

with the Treasurer's bidding process were State records as sound recordings made pursuant to law in connection with the transaction of official business or the expenditure of public funds.

A.G. Opin. 95-15

The Oklahoma Historical Society is a public body, as defined by the Open Records Act. As such, its membership list is required to be made available for public inspection and copying. § 24A.3; 53 O.S.1991, § 1.2.

A.G. Opin. 95-68

While this Opinion did not deal primarily with the Open Records Act, the Attorney General did determine that employee service ratings of the various agencies in the State which are received by the Office of Personnel Management for review do not become public record for that reason alone. The confidentiality of employee service ratings is determined by the employing agency, which has discretion to do so. § 24A.7.

A.G. Opin. 95-97

Telephone bills received by a municipality, for the use of landline and cellular phones by elected official and administrative personnel of the municipality, are public records under the Open Records Act. § 24A.4. A municipality may withhold or delete information on such a bill only when a privilege of confidentiality exists to permit the withholding or deletion of information. *Id.* §§ 24A.2; 24A.5.

A.G. Opin. 96-9:

Records of the Oklahoma County Sheriff Department's Bomb Squad, a law enforcement agency under the ORA, are confidential pursuant to Section 24A.8 of the Act, except as specifically provided by that section.

A.G. Opin. 96-26

This Opinion addresses whether a county assessor may contract to sell, for amounts to be set by the contract, computer-stored information to a private entity. A county assessor is limited in the setting of fees to the amounts authorized by the ORA at Section 24A.5(3) and by 28 O.S.Supp.1996, § 60, which sets certain fees for county assessors. Although this Opinion involves computer-readable records, the Attorney General determined that the provisions of Section 24A.5(3) which allow a fee only for recovery of "reasonable, direct costs of [the] mechanical reproduction" of the requested records. Further, search fees for such records are likewise limited by Section 24A.5(3) and are allowed only if the request for records "is solely for a commercial purpose" or "would clearly cause excessive disruption of the public body's essential functions." *Id.*

A.G. Opin. 97-16:

Documents comprising a background investigation for a judicial nomination performed by the Oklahoma State Bureau of Investigation are confidential records pursuant to 74 O.S.Supp.1996, §§ 150.5(D) and 150.34. As such, these records must be kept confidential by the OSBI. § 24A.5(1).

A.G. Opin. 97-48:

This Opinion deals with the issue of the State of Oklahoma as an employer for the purposes of releasing information regarding a State employee to a prospective employer. For the purposes of 40 O.S.Supp.1997, § 61, which relates to the disclosure of employment information, the State is a covered employer. As such, if a State employee consents to the disclosure of employment, job performance and/or employee service evaluation information regarding the State employee, such information may be released to a prospective employer, including service evaluations made pursuant to 74 O.S.1997, § 840-4.17.

A.G. Opin. 97-79:

When a State employee is terminated because of a positive random drug test, the State must disclose to a prospective employer of the terminated employee that the employee was terminated. § 24A.7(B). Records supporting disciplinary action against the employee may be kept confidential. *Id.* § 24A.7(A). Records of drug and alcohol test results and related information must be kept confidential by the agency and must be maintained separately from other employee records. 40 O.S.Supp.1996, § 560. If drug or alcohol test results are found within otherwise disclosable personnel records, such information must be redacted. *Id.*§ 560; 51 O.S.Supp.1996 § 24A.5(2).

A.G. Opin. 99-22:

The Oklahoma Open Records Act, 51 O.S.Supp.1999, § 24A.23, requires that the Oklahoma Department of Wildlife keep license holders information confidential unless it is used for a department purpose. The Attorney General held that generating revenue is not a department purpose, and that the information may not be released for that purpose.

A.G. Opin. 99-30:

The Oklahoma Statutes differentiate between state employees and public employees as to keeping employee information confidential. According to 74 O.S.Supp.1999, § 840-2.11, state agencies must keep state employees' home phone numbers, home addresses, and social security numbers confidential. Under the Open Records Act, public bodies other than state agencies must keep their current and former employees' home addresses confidential, 51 O.S.Supp.1999, § 24A.7, but may keep employee phone numbers confidential only if disclosure would constitute a clearly unwarranted invasion of privacy.

A.G. Opin. 99-37:

The Association of County Commissioners Self Insurance Fund and the Association of County Commissioners Self Insurance Group are public bodies because they are supported in whole or in part by public funds, or entrusted with expending public funds. Both groups are therefore subject to the Open Records Act, 51 O.S.1991 & Supp.1999, §§ 24A.1 – 24A.24, and the Open Meeting Act, 25 O.S.1991 & Supp.1999, §§ 301 – 314.

A.G. Opin. 99-55:

Certificates of Non-Coverage issued by the Department of Labor are public records under the Act, 51 O.S.Supp.1999, § 24A.5, and are therefore subject to disclosure. The Department: 1) may not require those who request information to enter into a written contract to obtain public records; 2) may solicit only reasonable information from requestors; and 3) may not create distinctions in the public's ability to inspect or copy public records. *See* 51 O.S.Supp.1999, §§ 24A.2, 24A.5.

A.G. Opin. 99-58:

Once a district attorney has filed the pleadings in a criminal case, a court clerk must make the pleadings available for inspection and copying unless the pleadings are protected by court order or other privilege. 51 O.S.Supp.1999, §§ 24A.3, 24A.5. A district attorney may, however, keep information in his or her litigation files confidential according to § 24A.12. Finally, police departments are not required to provide public access to department records except as provided in § 24A.8, or pursuant to court order.

A.G. Opin. 99-74:

County sheriffs' jail registers are public records subject to the Open Records Act, 51 O.S.Supp.1999, § 24A.8(A)(1), (8), and must be released to the public, including bail bondsmen, upon request.

A.G. Opin. 01-7:

Pursuant to 51 O.S.1991, § 24A.13, the State Department of Health may keep confidential certain personal information, including home addresses and social security numbers, of nursing aide applicants and licensees, because the information is confidential under federal law. However, the Open Records Act allows the Department to release the date a nursing aide became eligible for placement in its registry, as well as any finding that a nursing aide has been guilty of abuse, neglect, or exploitation.

A.G. Opin. 01-24:

When a court clerk files of record the names of persons selected as general panel jurors, the jurors' names become available to the public under the Open Records Act.

A.G. Opin. 01-29:

Banks may withhold information from the public regarding public funds held in deposit, because banks are not public bodies as defined by the Open Records Act, and are therefore not subject to the Act's disclosure requirements.

A.G. Opin. 01-46:

This Opinion addressed whether electronic messages (emails) created or received by public bodies constitute records under the Open Records Act and thus are subject to the Act's disclosure requirements. The Opinion concluded that as long as an email is connected with the transaction of public business, expenditure of public funds, or administration of public property, it is a record under the Act. The Opinion further determined that emails may be retained either in electronic form or on paper; however, if emails are retained on paper, documentation must exist to direct persons seeking information to all relevant material regarding the record. Finally, public bodies may allow electronic access to their records; however, public bodies must provide records in another format if confidential information cannot be redacted in the electronic format.

A.G. Opin. 02-5:

Documents created by the Governor's Security and Preparedness Executive Panel are not subject to the Open Records Act, 51 O.S.2001, §§ 24A.1 – 24A.26, because the Panel is not a "public body" as defined in that Act, nor are records the Panel creates "public records" under the Act. However, materials connected with the transaction of public business, expenditure of public funds, or administration of public property which are created by, or come into the possession of, any of the public officials who serve on the Panel constitute records under the Open Records Act.

A.G. Opin. 02-27:

Under the Open Records Act, 51 O.S.2001, § 24A.11, a public body may keep confidential donated library, archive, or museum materials, as well as any information which would reveal the identity of an individual who lawfully makes a donation to or on behalf of a public body.

A.G. Opin. 02-42:

The Silver Haired Legislature is subject to the Open Records Act, 51 O.S. 2001, §§ 24A.1 – 24A.26, because it is supported in part by publicly funded state agencies, thereby making it a public body under the Act.

A.G. Opin. 02-44:

The Grand River Dam Authority Lakes Advisory Commission is a public body as defined in the Open Records Act, 51 O.S.2001, §§ 24A.1 – 24A.26, and is therefore subject to the Act.

A.G. Opin. 03-28:

As a State agency administering or operating public property, a State-created Indian housing authority is subject to the provisions of the Oklahoma Open Records Act. 51 O.S.Supp.2002, § 24A.3. The names and addresses of the participants contained in the records of a State-created Indian housing authority are subject to disclosure under the Oklahoma Open Records Act because no exemption applies and no other provision of law requires their confidentiality. 51 O.S.2001, § 24A.5.

A.G. Opin. 03-31:

Records of the Oklahoma Tax Commission regarding the Workers' Compensation Assessment Rebate Fund are not subject to the Open Records Act, 51 O.S.2001 & Supp.2002, §§ 24A.1 – 24A.26, but instead are confidential and cannot be disclosed except where specifically authorized. 68 O.S.2001, § 205(A).

A.G. Opin. 05-3:

A public body under the Open Records Act may contract with a private vendor to provide electronic access and reproduction of its records, but it must still provide access to those records at the public body's office under 51 O.S. 2001, § 24A.5(3), (5) and (6). Therefore, even though a public body maintains its records at some other physical location, it must also make its records available at its office, either in original or duplicated form. If more than one office location exists, the records must be maintained and made available at the office where the records are maintained in the ordinary course of business. A public body is not prohibited from contracting with a private vendor for record storage, but must retrieve any requested records and provide access to a requester at the public body's office.

A.G. Opin. 05-19:

Computer registries maintained by libraries are records under the Open Records Act. However, the records are confidential under 65 O.S.2001, § 1-105(A) because they indicate which of the libraries' documents or material have been loaned to or used by identifiable individuals, unless one of the exceptions in the Act is met.

A.G. Opin. 05-21:

Furnishing electronic copies of instruments kept by a county clerk in computer-readable format is subject to the fee limitations of the Oklahoma Open Records Act, which allows a search fee in some cases. 51 O.S.Supp.2004, § 24A.5(3).

A.G. Opin. 05-39:

The Health Insurance High Risk Pool is not a public body under the Open Records Act and its records are not subject to disclosure under the Open Records Act. 51 O.S.Supp.2005, § 24A.3; 36 O.S.Supp.2005, § 6535.

A.G. Opin. 05-50:

Section 2835(E) of Title 68 provides an exemption for "sworn lists of property" filed by a taxpayer with the county assessor from the Open Records Act. The exemption does not make confidential records created or received in the informal hearing process of 68 O.S.Supp.2005, § 2876(F).

A.G. Opin. 06-35:

A public body that receives an open records request must permit the requester to use his/her personal copying equipment as long as the copying process does not unreasonably disrupt the public body's essential functions or result in loss of or damage to records. Public bodies need not furnish original records as long as any copy supplied is a true and correct reproduction of the original.

A.G. Opin. 08-19:

Records of the receipt and/or expenditure of public funds by legislators and their employees are subject to disclosure under the Open Records Act. While the Open Records Act does not require disclosure of communications among members of the Legislature, any written or electronic communication received by a public body from a legislator or legislative employee becomes a record of that public body and is subject to disclosure unless made confidential or privileged by law.

A.G. Opin. 09-12:

E-mails, text messages, and other electronic communications made or received in connection with the transaction of public business are subject to the Open Records Act regardless of whether the equipment used to create or send them is publicly or privately owned.

A.G. Opin. 09-27:

Court clerks may charge the copying fees specified in 28 O.S.Supp.2008, § 31 regardless of the fee limitations in the Open Records Act, 51 O.S.Supp.2008, § 24A.5(3).

A.G. Opin. 09-33:

A public body may, on an individual basis, determine that disclosing a personnel record indicating an employee's date of birth is an "unwarranted invasion of personal privacy" under the Open Records Act, 51 O.S.Supp.2008, § 24A.7(A)(2).