

REQUESTING PUBLIC RECORDS IN OKLAHOMA

✓ *Develop an Open Government State of Mind*

- Don't be shy about asking for public records or attending public meetings.
- Access to governmental records and meetings is the only way the public can study and challenge decisions made by those elected or hired to govern.
- Oklahomans are "vested with an inherent right to know and be fully informed about their government." The purpose of the Oklahoma Open Records Act is "to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power."
 - Oklahoma Open Records Act (Okla. Stat. tit. 51, § 24A.2)

✓ *Know the Law: Oklahoma's Open Records Act*

- Presumption of Openness: All state and local records are open unless specifically exempted by statute. Always assume a government record is open.
- Definitions:
 - Public Record: "All documents, including, but not limited to:
 - Any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, record, sound recording, film recording, video record or other material regardless of physical form or characteristic,
 - Created by, received by, under the authority of, or coming into the custody, control or possession of
 - Public officials, public bodies, or their representatives
 - In connection with the transaction of public business, the expenditure of public funds or the administering of public property." (§ 24A.3(1))
 - Public Official: "Any official or employee of any public body." (§ 24A.3(4))
 - Doesn't include "state judges, justices, the Council on Judicial Complaints, the Legislature [and] legislators." (§ 24A.3(2))
 - Public Body: Includes private nonprofit corporations that "have entered into contractual arrangements with municipalities to operate or maintain public property for and on behalf of such municipalities." (1981 OK AG 184)
 - Applies to the records "pertaining to the operation or maintenance of public property ... regardless of who generates those records or who is the custodian thereof."
- Government *must*:
 - Make available during all regular business hours someone who is authorized to release records. (§ 24A.5(7))
 - Provide "prompt, reasonable access to its records," limit delays "solely to the time" required to prepare records and not "unreasonably" delay "until after completion of a prior records request that will take substantially longer than the current request." (§ 24A.5(6))

- Government *may*:
 - Post records online to meet the “prompt, reasonable access” requirement. (§ 24A.5(6))
 - “Establish reasonable procedures that protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions.” (§ 24A.5(6))
 - Require that the request be in writing but can only *request* the requester’s name and telephone number. (1999 OK AG 58)
 - **NOT** ask why the requester wants the record except to determine if a search fee should be charged. (1999 OK AG 58)
- Fees:
 - Copy Fee: “May charge a fee only for recovery of the reasonable, direct costs of record copying, or mechanical reproduction.” (§ 24A.5(3))
 - Max of 25 cents per page for uncertified paper documents sized 8 1/2 by 14 inches or smaller. Max of \$1 for certified paper documents. (§ 24A.5(3))
 - *Court* clerks must charge \$1 for the first page and 50 cents for each subsequent page for a copy of “an instrument of record or on file.” (OKLA. STAT. tit. 28, § 31)
 - *County* clerks must charge \$1 per page for “photographic copies of photographic records, or of typewritten script or printed records.” (OKLA. STAT. tit. 28, § 32)
 - Search Fee:
 - May charge “a reasonable fee to recover the direct cost of record search and copying” if the request is for “solely commercial purposes” or “would clearly cause excessive disruption of the public body’s essential functions.” (OKLA. STAT. tit. 51, § 24A.5(4))
 - “*In no case shall* a search fee be charged when the release of records is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.” (§ 24A.5(4))

✓ ***Steps to Politely but Persistently Request a Record***

- Determine which state or local agency most likely has the information you want.
- Check the agency’s website for procedures it has created for requesting records.
 - If the agency doesn’t have procedures listed or doesn’t have a website, then call or walk in to ask to inspect the record.
 - A clerk behind the counter can be more helpful than accessing records electronically because clerks can frequently provide records not available online.
- If you want to put your request in writing, use the agency’s form or attached letter.
- Ask to inspect paper records: Look for FREE first before asking for copies.
 - Take photos or use a portable scanner.
- Ask for electronic files on CD or emailed for free.

✓ ***What to Do When a Record is Denied***

- “The record doesn’t exist.”
 - Don’t rely on the word of a single person.
 - Ask the employee who would have generated the record.
 - Ask the supervisor or other person in charge.
- “The law exempts that record.”
 - Ask the agency to put the exemption in writing. The burden is on the agency – not you – to demonstrate that an exemption exists.
 - Check the exemption. Does it really apply?
 - If a state statute is cited, use www.oscn.net’s Legal Research.
- “Can’t release the record because it contains exempted information.”
 - Then redact the exempted information and release the data that the public is entitled to have. (§ 24A.5(3))
- “Copying the data with fields redacted would create a new record, and we aren’t required to do that.”
 - Not creating a new record. It’s copying existing data.
 - No different from getting a copy of a paper file with some information (fields) redacted with a black pen.
- “That will be \$1 million.”
 - Ask for a detailed justification of the expenses.
 - What does the computer programmer earn?
 - Ask the software company if copying data should be time-consuming.
 - Have other people requested the same records?
 - What do other agencies charge for similar requests?
- The agency hasn’t responded to your request.
 - Go by or call every day to find out what happened.
 - Address another letter/email to the agency head, elected officials overseeing the agency, and your state representative and senator. Note that you haven’t received a response.
- The agency says it will be six months to provide a copy.
 - Ask why it will take so long.
 - Use social media to tell people. Email your state representative or senator.
- Don’t get mad. Get busy! Where else could the information be? Go find it.
- **Get Help**
 - **Resources available at FOI Oklahoma, foioklahoma.org**
 - **Contact me at joey.senat@okstate.edu or 405-744-8277.**

This letter is provided by Joey Senat, Ph.D., OSU School of Media & Strategic Communications. Use of the letter is free, but please notify professor Senat, joey.senat@okstate.edu, when it is used. An electronic copy is available at foioklahoma.org/resources/open-records-act/model-letter-for-records-requests/.

DATE

NAME OF OFFICIAL
TITLE
AGENCY
ADDRESS

Dear _____:

Under the Oklahoma Open Records Act, Title 51, Sections 24A.1-30, I am requesting that any and all records related to [NAME OF RECORDS / GENERAL DESCRIPTION] be made available to me for *inspection*. These records should include, but not be limited to, the following:

[DETAILED LISTING OF RECORDS]

I acknowledge that not all government-held information is open to the public. However, the Oklahoma Supreme Court has said the party claiming non-disclosure carries the burden to prove that an exemption applies. The Court also has said government officials must consider in ruling on records requests that "disclosure is to be favored over a finding of exemption." If all or some portion of my request is denied, please cite in writing the specific statutory exemption being claimed.

Please note that I am asking to inspect these records. I reserve, however, the right to request copies when the records are examined.

The Oklahoma Open Records Act prohibits the charging of a search fee when the release of the "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." [EXPLAIN YOUR IDENTITY & PURPOSE IN TERMS THAT FIT THE PROVISION.] My request clearly falls within this provision of the Open Records Act and no search fee should be charged for this request.

The Oklahoma Open Records Act requires that public bodies provide "prompt, reasonable access to its records," which a state Attorney General Opinion defined as meaning "only the time required to locate and compile the public records." Please respond to this request by no later than [DATE].

If you have any questions about the nature or scope of this request, please contact me. Thank you for your cooperation.

Sincerely,

[YOUR NAME, TITLE AND CONTACT INFORMATION, INCLUDING ADDRESS, PHONE NUMBER AND EMAIL ADDRESS]