

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 HOUSE BILL 2287

 By: Pfeiffer

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7 AS INTRODUCED

8 An Act relating to open records; creating the Public
9 Access Counselor within the Office of the Attorney
10 General; allowing certain persons to file review of
11 denial of open records requests with the Public
12 Access Counselor; providing instructions for filing;
13 prohibiting filings made for a commercial purpose;
14 establishing procedures for review of requests;
15 directing Public Access Counselor to notify public
16 body; requiring certain furnishing of records;
17 permitting subpoena by the Attorney General;
18 prohibiting disclosure of certain protected
19 information; allowing public body chance to respond
20 to request; directing for binding opinion to be made
21 within time frame; permitting Attorney General to
22 choose other means for resolving review requests;
23 permitting parties to file in district court;
24 directing for notification of certain proceedings;
 permitting the Attorney General to issue advisory
 opinions to public bodies regarding compliance;
 exempting certain failures to comply made under good
 faith; providing for codification; and providing an
 effective date.

21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 24A.40 of Title 51, unless there
24 is created a duplication in numbering, reads as follows:

1 A. There is hereby established in the Office of the Attorney
2 General the position of Public Access Counselor.

3 B. A person whose request to inspect or copy a public record is
4 denied by a public body, except the Legislature and committees,
5 commissions, and agencies thereof, may file a request for review
6 with the Public Access Counselor not later than sixty (60) days
7 after the date of the final denial. The request for review must be
8 in writing, signed by the requester, and include:

- 9 1. A copy of the request for access to records; and
- 10 2. Any responses from the public body.

11 C. A person whose request to inspect or copy a public record is
12 made for a commercial purpose may not file a request for review with
13 the Public Access Counselor. A person whose request to inspect or
14 copy a public record was treated by the public body as a request for
15 a commercial purpose may file a request for review with the Public
16 Access Counselor for the limited purpose of reviewing whether the
17 public body properly determined that the request was made for a
18 commercial purpose.

19 D. Upon receipt of a request for review, the Public Access
20 Counselor shall determine whether further action is warranted. If
21 the Public Access Counselor determines that the alleged violation is
22 unfounded, they shall advise the requester and the public body and
23 no further action shall be undertaken. In all other cases, the
24 Public Access Counselor shall forward a copy of the request for

1 review to the public body within seven (7) business days after
2 receipt and shall specify the records or other documents that the
3 public body shall furnish to facilitate the review. Within seven
4 (7) business days after receipt of the request for review, the
5 public body shall provide copies of records requested and shall
6 otherwise fully cooperate with the Public Access Counselor. If a
7 public body fails to furnish specified records pursuant to this act,
8 or if otherwise necessary, the Attorney General may issue a subpoena
9 to any person or public body having knowledge of or records
10 pertaining to a request for review of a denial of access to records
11 under the act. To the extent that records or documents produced by
12 a public body contain information claimed to be exempt from
13 disclosure under the Oklahoma Open Records Act, the Public Access
14 Counselor shall not further disclose that information.

15 E. Within seven (7) business days after it receives a copy of a
16 request for review and request for production of records from the
17 Public Access Counselor, the public body may, but is not required
18 to, answer the allegations of the request for review. The answer
19 may take the form of a letter, brief, or memorandum. The Public
20 Access Counselor shall forward a copy of the answer to the person
21 submitting the request for review, with any alleged confidential
22 information to which the request pertains redacted from the copy.
23 The requester may, but is not required to, respond in writing to the
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1 answer within seven (7) business days and shall provide a copy of
2 the response to the public body.

3 F. In addition to the request for review, and the answer and
4 the response thereto, if any, a requester or a public body may
5 furnish affidavits or records concerning any matter germane to the
6 review.

7 G. Unless the Public Access Counselor extends the time by no
8 more than 30 business days by sending written notice to the
9 requester and the public body that includes a statement of the
10 reasons for the extension in the notice, or decides to address the
11 matter without the issuance of a binding opinion, the Attorney
12 General shall examine the issues and the records, shall make
13 findings of fact and conclusions of law, and shall issue to the
14 requester and the public body an opinion in response to the request
15 for review within sixty (60) days after its receipt. The opinion
16 shall be binding upon both the requester and the public body.

17 In responding to any request under this act, the Attorney
18 General may exercise their discretion and choose to resolve a
19 request for review by mediation or by means other than the issuance
20 of a binding opinion. The decision not to issue a binding opinion
21 shall not be reviewable.

22 Upon receipt of a binding opinion concluding that a violation of
23 this act has occurred, the public body shall either take necessary
24 action immediately to comply with the directive of the opinion or

1 shall file suit in the proper district court. If the opinion
2 concludes that no violation of the act has occurred, the requester
3 may file suit in the proper district court.

4 A public body that discloses records in accordance with an
5 opinion of the Attorney General is immune from all liabilities by
6 reason thereof and shall not be liable for penalties under this act.

7 H. If the requester files suit under Section 24A.17 of Title 51
8 of the Oklahoma Statutes with respect to the same denial that is the
9 subject of a pending request for review, the requester shall notify
10 the Public Access Counselor, and the Public Access Counselor shall
11 take no further action with respect to the request for review and
12 shall so notify the public body.

13 I. The Attorney General may also issue advisory opinions to
14 public bodies regarding compliance with this act. A review may be
15 initiated upon receipt of a written request from the head of the
16 public body or its attorney, which shall contain sufficient accurate
17 facts from which a determination can be made. The Public Access
18 Counselor may request additional information from the public body in
19 order to assist in the review. A public body that relies in good
20 faith on an advisory opinion of the Attorney General in responding
21 to a request is not liable for penalties under this act, so long as
22 the facts upon which the opinion is based have been fully and fairly
23 disclosed to the Public Access Counselor.

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1 SECTION 2. This act shall become effective November 1, 2023.

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3 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated
4 02/28/2023 - DO PASS.

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