

1 **SENATE FLOOR VERSION**

2 April 11, 2023

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 2287

By: Pfeiffer of the House

and

McCortney of the Senate

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8
9 [open records - Public Access Counselor - review of
10 denial of open records requests - filings - subpoena
11 by Attorney General - binding opinion - advisory
12 opinions - codification -

emergency]

13
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

18 A. There is hereby established in the Office of the Attorney
19 General the Public Access Counselor Unit.

20 B. A person whose request to inspect or copy a public record is
21 denied by a public body, except the Legislature and committees,
22 commissions, and agencies thereof, may file a request for review
23 with the Public Access Counselor not later than thirty (30) calendar
24 days after the date of the denial. The request for review shall be

1 in writing on a form prescribed by the Attorney General and signed
2 by the requester, and shall include:

3 1. A copy of the request for access to records; and

4 2. Any responses from the public body.

5 C. A person whose request to inspect or copy a public record
6 was treated by the public body as a request for a commercial purpose
7 may file a request for review with the Public Access Counselor for
8 the limited purpose of reviewing whether the public body properly
9 determined that the request was made for a commercial purpose.

10 D. A person whose request to inspect or copy a public record
11 has not been returned in a prompt or reasonable manner may file a
12 request for review with the Public Access Counselor.

13 E. No person whose request to inspect or copy a public record
14 is made for a commercial purpose may file a request for review with
15 the Public Access Counselor.

16 F. Upon receipt of a request for review, the Public Access
17 Counselor shall determine whether further action is warranted. If
18 the Public Access Counselor determines that the alleged violation is
19 unfounded, they shall advise the requester and the public body and
20 no further action shall be undertaken. In all other cases, the
21 Public Access Counselor shall forward a copy of the request for
22 review to the public body within seven (7) business days after
23 receipt and shall specify the records or other documents that the
24 public body shall furnish to facilitate the review. Within seven

1 (7) business days after receipt of the request for review, the
2 public body shall fully cooperate and provide a written response to
3 the Public Access Counselor. To the extent that records or
4 documents produced by a public body contain information claimed to
5 be confidential or exempt from disclosure under the Oklahoma Open
6 Records Act, the Public Access Counselor shall not further disclose
7 that information.

8 G. 1. The Attorney General shall examine the request and
9 response and shall issue to the public body or public official, or
10 both, an advisement in response to the request for review within
11 sixty (60) calendar days after its receipt. Additionally, the
12 Attorney General shall notify the requester when the office has
13 completed its review.

14 2. Upon receipt of an advisement, the public body shall either
15 take necessary action promptly and reasonably to comply with the
16 Oklahoma Open Records Act or shall respond to the requester. If the
17 advisement concludes that no additional response is required, the
18 requester may file suit in the proper district court against the
19 public body of which the request was made.

20 3. A public body that discloses records in accordance with
21 advice of the Attorney General is immune from all liabilities by
22 reason thereof and shall not be liable for penalties under this act.

23 H. If the requester files suit under Section 24A.17 of Title 51
24 of the Oklahoma Statutes with respect to the same denial that is the

1 subject of a pending request for review, the requester shall notify
2 the Public Access Counselor, and the Public Access Counselor shall
3 take no further action with respect to the request for review and
4 shall so notify the public body.

5 I. The Attorney General may issue advisory opinions to advise
6 public bodies regarding compliance with this act. A review may be
7 initiated upon receipt of a written request from the head of the
8 public body or its attorney, which shall contain sufficient accurate
9 facts from which a determination can be made. The Public Access
10 Counselor may request additional information from the public body in
11 order to assist in the review. A public body that relies in good
12 faith on the advice of the Attorney General in responding to a
13 request is not liable for penalties under this act if the facts upon
14 which the advice is based have been fully and fairly disclosed to
15 the Public Access Counselor.

16 J. If the Public Access Counselor finds that a person
17 requesting review of an agency's action pursuant to subsections B,
18 C, or D of this section has submitted multiple frivolous requests,
19 the Public Access Counselor may deny future requests for review.

20 K. Notwithstanding any other provisions of law, the Attorney
21 General shall not be required to produce pursuant to Section 24A.5
22 of Title 51 of the Oklahoma Statutes, the following:

23 1. Any records provided under this section to the Office of the
24 Attorney General by another public body;

1 2. Any correspondence between the Office of the Attorney
2 General and the public body related to advice under this section; or

3 3. Any work papers or product of the Office of the Attorney
4 General in carrying out the duties required by this section.

5 L. Nothing in this section shall be construed to limit the
6 Attorney General from enforcing or taking action regarding the
7 Oklahoma Open Records Act.

8 SECTION 2. AMENDATORY 74 O.S. 2021, Section 18b, as last
9 amended by Section 1, Chapter 296, O.S.L. 2022 (74 O.S. Supp. 2022,
10 Section 18b), is amended to read as follows:

11 Section 18b. A. The duties of the Attorney General as the
12 chief law officer of the state shall be:

13 1. To appear for the state and prosecute and defend all actions
14 and proceedings, civil or criminal, in the Supreme Court and Court
15 of Criminal Appeals in which the state is interested as a party;

16 2. To appear for the state and prosecute and defend all actions
17 and proceedings in any of the federal courts in which the state is
18 interested as a party;

19 3. To initiate or appear in any action in which the interests
20 of the state or the people of the state are at issue, or to appear
21 at the request of the Governor, the Legislature, or either branch
22 thereof, and prosecute and defend in any court or before any
23 commission, board or officers any cause or proceeding, civil or
24 criminal, in which the state may be a party or interested; and when

1 so appearing in any such cause or proceeding, the Attorney General
2 may, if the Attorney General deems it advisable and to the best
3 interest of the state, take and assume control of the prosecution or
4 defense of the state's interest therein;

5 4. To consult with and advise district attorneys, when
6 requested by them, in all matters pertaining to the duties of their
7 offices, when the district attorneys shall furnish the Attorney
8 General with a written opinion supported by citation of authorities
9 upon the matter submitted;

10 5. To give an opinion in writing upon all questions of law
11 submitted to the Attorney General by the Legislature or either
12 branch thereof, or by any state officer, board, commission or
13 department, provided, that the Attorney General shall not furnish
14 opinions to any but district attorneys, the Legislature or either
15 branch thereof, or any other state official, board, commission or
16 department, and to them only upon matters in which they are
17 officially interested;

18 6. At the request of the Governor, State Auditor and Inspector,
19 State Treasurer, or either branch of the Legislature, to prosecute
20 any official bond or any contract in which the state is interested,
21 upon a breach thereof, and to prosecute or defend for the state all
22 actions, civil or criminal, relating to any matter connected with
23 either of their Departments;

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1 7. Whenever requested by any state officer, board or
2 commission, to prepare proper drafts for contracts, forms and other
3 writing which may be wanted for the use of the state;

4 8. To prepare drafts of bills and resolutions for individual
5 members of the Legislature upon their written request stating the
6 gist of the bill or resolution desired;

7 9. To enforce the proper application of monies appropriated by
8 the Legislature and to prosecute breaches of trust in the
9 administration of such funds;

10 10. To institute actions to recover state monies illegally
11 expended, to recover state property and to prevent the illegal use
12 of any state property, upon the request of the Governor or the
13 Legislature;

14 11. To pay into the State Treasury, immediately upon its
15 receipt, all monies received by the Attorney General belonging to
16 the state;

17 12. To settle, compromise and dispose of an action in which the
18 Attorney General represents the interests of the state, so long as
19 the consideration negotiated for such settlement, compromise or
20 disposition is payable to the state or one of its agencies which is
21 a named party of the action and any monies, any property or other
22 item of value is paid first to the State Treasury;

23 13. To keep and file copies of all opinions, contracts, forms
24 and letters of the office, and to keep an index of all opinions,

1 contracts and forms according to subject and section of the law
2 construed or applied;

3 14. To keep a register or docket of all actions, demands and
4 investigations prosecuted, defended or conducted by the Attorney
5 General in behalf of the state. The register or docket shall give
6 the style of the case or investigation, where pending, court number,
7 office number, the gist of the matter, result and the names of the
8 assistants who handled the matter;

9 15. To keep a complete office file of all cases and
10 investigations handled by the Attorney General on behalf of the
11 state;

12 16. To report to the Legislature or either branch thereof
13 whenever requested upon any business relating to the duties of the
14 Attorney General's office;

15 17. To institute civil actions against members of any state
16 board or commission for failure of such members to perform their
17 duties as prescribed by the statutes and the Constitution and to
18 prosecute members of any state board or commission for violation of
19 the criminal laws of this state where such violations have occurred
20 in connection with the performance of such members' official duties;

21 18. To respond to any request for an opinion of the Attorney
22 General's office, submitted by a member of the Legislature,
23 regardless of subject matter, by written opinion determinative of
24 the law regarding such subject matter;

1 19. To convene multicounty grand juries in such manner and for
2 such purposes as provided by law; provided, such grand juries are
3 composed of citizens from each of the counties on a pro rata basis
4 by county;

5 20. To investigate any report by the State Auditor and
6 Inspector filed with the Attorney General pursuant to Section 223 of
7 this title and prosecute all actions, civil or criminal, relating to
8 such reports or any irregularities or derelictions in the management
9 of public funds or property which are violations of the laws of this
10 state;

11 21. To represent and protect the collective interests of all
12 utility consumers of this state in rate-related proceedings before
13 the Corporation Commission or in any other state or federal judicial
14 or administrative proceeding;

15 22. To represent and protect the collective interests of
16 insurance consumers of this state in rate-related proceedings before
17 the Insurance Commissioner or in any other state or federal judicial
18 or administrative proceeding;

19 23. To investigate and prosecute any criminal action relating
20 to insurance fraud, if in the opinion of the Attorney General a
21 criminal prosecution is warranted, or to refer such matters to the
22 appropriate district attorney;

23 24. To monitor and evaluate any action by the federal
24 government including, but not limited to, executive orders by the

1 President of the United States, rules or regulations promulgated by
2 an agency of the federal government or acts of Congress to determine
3 if such actions are in violation of the Tenth Amendment to the
4 Constitution of the United States; ~~and~~

5 25. To maintain data related to human trafficking and to assist
6 law enforcement, social service agencies, and victim services
7 programs in identifying and supporting victims of human trafficking;
8 and

9 26. To investigate and prosecute any civil or criminal action
10 relating to violations of the Oklahoma Open Records Act, Section
11 24A.1 et seq. of Title 51 of the Oklahoma Statutes, or the Oklahoma
12 Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma
13 Statutes, if the Attorney General determines that a civil or
14 criminal prosecution is warranted or to defer such matters to a
15 district attorney.

16 B. Nothing in this section shall be construed as requiring the
17 Attorney General to appear and defend or prosecute in any court any
18 cause or proceeding for or on behalf of the Oklahoma Tax Commission,
19 the Board of Managers of the State Insurance Fund, or the
20 Commissioners of the Land Office.

21 C. In all appeals from the Corporation Commission to the
22 Supreme Court of Oklahoma in which the state is a party, the
23 Attorney General shall have the right to designate counsel of the
24 Corporation Commission as the Attorney General's legally appointed

1 representative in such appeals, and it shall be the duty of the
2 Corporation Commission counsel to act when so designated and to
3 consult and advise with the Attorney General regarding such appeals
4 prior to taking action therein.

5 SECTION 3. It being immediately necessary for the preservation
6 of the public peace, health or safety, an emergency is hereby
7 declared to exist, by reason whereof this act shall take effect and
8 be in full force from and after its passage and approval.

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
10 April 11, 2023 - DO PASS AS AMENDED BY CS

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