

1 ENGROSSED HOUSE
2 BILL NO. 2287

By: Pfeiffer of the House

3 and

4 McCortney of the Senate

5
6
7 [open records - Public Access Counselor - review of
8 denial of open records requests - filings -
9 subpoena by Attorney General - binding opinion -
10 advisory opinions - codification - effective date]
11
12
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 position of Public Access Counselor.

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 sixty (60) days
24

1 after the date of the final denial. The request for review must be
2 in writing, signed by the requester, and 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 is
6 made for a commercial purpose may not file a request for review with
7 the Public Access Counselor. A person whose request to inspect or
8 copy a public record was treated by the public body as a request for
9 a commercial purpose may file a request for review with the Public
10 Access Counselor for the limited purpose of reviewing whether the
11 public body properly determined that the request was made for a
12 commercial purpose.

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

1 public body fails to furnish specified records pursuant to this act,
2 or if otherwise necessary, the Attorney General may issue a subpoena
3 to any person or public body having knowledge of or records
4 pertaining to a request for review of a denial of access to records
5 under the act. To the extent that records or documents produced by
6 a public body contain information claimed to be exempt from
7 disclosure under the Oklahoma Open Records Act, the Public Access
8 Counselor shall not further disclose that information.

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

20 F. In addition to the request for review, and the answer and
21 the response thereto, if any, a requester or a public body may
22 furnish affidavits or records concerning any matter germane to the
23 review.

24

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

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

16 Upon receipt of a binding opinion concluding that a violation of
17 this act has occurred, the public body shall either take necessary
18 action immediately to comply with the directive of the opinion or
19 shall file suit in the proper district court. If the opinion
20 concludes that no violation of the act has occurred, the requester
21 may file suit in the proper district court.

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

1 H. If the requester files suit under Section 24A.17 of Title 51
2 of the Oklahoma Statutes with respect to the same denial that is the
3 subject of a pending request for review, the requester shall notify
4 the Public Access Counselor, and the Public Access Counselor shall
5 take no further action with respect to the request for review and
6 shall so notify the public body.

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

18 SECTION 2. This act shall become effective November 1, 2023.
19
20
21
22
23
24

1 Passed the House of Representatives the 22nd day of March, 2023.

2
3 _____
4 Presiding Officer of the House
5 of Representatives

6 Passed the Senate the ___ day of _____, 2023.

7
8 _____
9 Presiding Officer of the Senate