

<DateSubmitted>

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB2287

By: Pfeiffer of the House and McCortney of the Senate

Title: Open records; Public Access Counselor; Attorney General; review of denial; public bodies; effective date; emergency.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

- 1. That the Senate recede from its amendment; and
- 2. By adopting the following conference committee amendment to restore the title to read as follows:

"An Act relating to open records; creating the Public Access Counselor Unit within the Office of the Attorney General; allowing certain persons to file review of denial of open records requests with the Public Access Counselor; providing instructions for filing; permitting filings made for limited purpose of determining whether request was made for commercial purpose; permitting request for review of certain instances; prohibiting filing for review of request made for commercial purpose; establishing procedures for review of requests; directing Public Access Counselor to notify public body; requiring certain furnishing of records; directing the Attorney General to issue certain advisements and notifications; granting immunity for disclosers made in accordance with advice of the Attorney General; Allowing for certain advisory opinions to be issued by the Attorney General; Permitting the Public Access Counselor to deny future requests of parties who have made multiple frivolous requests; Directing that the Attorney General shall not be required to produce under certain criteria; Establishing that the Attorney General is not limited from enforcing or taking action regarding the Oklahoma Open Records Act; Amending 74 O.S. 2021, Section 18b, as last amended by Section 1, Chapter 296, O.S.L. 2022 (74 O.S. Supp. 2022, Section 18b), which relates to duties of Attorney General; modifying the duties of the Attorney General to include investigating and prosecuting certain actions relating to the violation of the Oklahoma Open Records Act and the Oklahoma Open Meeting Act; providing for codification; and declaring an emergency."

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

SENATE CONFEREES

McCortney _____

Paxton _____

Floyd _____

Howard _____

Montgomery _____

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 2287

By: Pfeiffer of the House

and

McCortney of the Senate

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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]

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13 AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause
and entire bill and insert

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15 "[open records - Public Access Counselor - review of
16 denial of open records requests - filings - subpoena
by Attorney General - binding opinion - advisory
17 opinions - codification -
emergency]

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

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

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

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 thirty (30) calendar
7 days after the date of the denial. The request for review shall be
8 in writing on a form prescribed by the Attorney General and signed
9 by the requester, and shall include:

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

12 C. A person whose request to inspect or copy a public record
13 was treated by the public body as a request for a commercial purpose
14 may file a request for review with the Public Access Counselor for
15 the limited purpose of reviewing whether the public body properly
16 determined that the request was made for a commercial purpose.

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

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

23 F. Upon receipt of a request for review, the Public Access
24 Counselor shall determine whether further action is warranted. If

1 the Public Access Counselor determines that the alleged violation is
2 unfounded, they shall advise the requester and the public body and
3 no further action shall be undertaken. In all other cases, the
4 Public Access Counselor shall forward a copy of the request for
5 review to the public body within seven (7) business days after
6 receipt and shall specify the records or other documents that the
7 public body shall furnish to facilitate the review. Within seven
8 (7) business days after receipt of the request for review, the
9 public body shall fully cooperate and provide a written response to
10 the Public Access Counselor. To the extent that records or
11 documents produced by a public body contain information claimed to
12 be confidential or exempt from disclosure under the Oklahoma Open
13 Records Act, the Public Access Counselor shall not further disclose
14 that information.

15 G. 1. The Attorney General shall examine the request and
16 response and shall issue to the public body or public official, or
17 both, an advisement in response to the request for review within
18 sixty (60) calendar days after its receipt. Additionally, the
19 Attorney General shall notify the requester when the office has
20 completed its review.

21 2. Upon receipt of an advisement, the public body shall either
22 take necessary action promptly and reasonably to comply with the
23 Oklahoma Open Records Act or shall respond to the requester. If the
24 advisement concludes that no additional response is required, the

1 requester may file suit in the proper district court against the
2 public body of which the request was made.

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

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

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

23 J. If the Public Access Counselor finds that a person
24 requesting review of an agency's action pursuant to subsections B,

1 C, or D of this section has submitted multiple frivolous requests,
2 the Public Access Counselor may deny future requests for review.

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

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

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

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

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

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

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

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

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

4 3. To initiate or appear in any action in which the interests
5 of the state or the people of the state are at issue, or to appear
6 at the request of the Governor, the Legislature, or either branch
7 thereof, and prosecute and defend in any court or before any
8 commission, board or officers any cause or proceeding, civil or
9 criminal, in which the state may be a party or interested; and when
10 so appearing in any such cause or proceeding, the Attorney General
11 may, if the Attorney General deems it advisable and to the best
12 interest of the state, take and assume control of the prosecution or
13 defense of the state's interest therein;

14 4. To consult with and advise district attorneys, when
15 requested by them, in all matters pertaining to the duties of their
16 offices, when the district attorneys shall furnish the Attorney
17 General with a written opinion supported by citation of authorities
18 upon the matter submitted;

19 5. To give an opinion in writing upon all questions of law
20 submitted to the Attorney General by the Legislature or either
21 branch thereof, or by any state officer, board, commission or
22 department, provided, that the Attorney General shall not furnish
23 opinions to any but district attorneys, the Legislature or either
24 branch thereof, or any other state official, board, commission or

1 department, and to them only upon matters in which they are
2 officially interested;

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

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

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

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

18 10. To institute actions to recover state monies illegally
19 expended, to recover state property and to prevent the illegal use
20 of any state property, upon the request of the Governor or the
21 Legislature;

22 11. To pay into the State Treasury, immediately upon its
23 receipt, all monies received by the Attorney General belonging to
24 the state;

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

7 13. To keep and file copies of all opinions, contracts, forms
8 and letters of the office, and to keep an index of all opinions,
9 contracts and forms according to subject and section of the law
10 construed or applied;

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

17 15. To keep a complete office file of all cases and
18 investigations handled by the Attorney General on behalf of the
19 state;

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

23 17. To institute civil actions against members of any state
24 board or commission for failure of such members to perform their

1 duties as prescribed by the statutes and the Constitution and to
2 prosecute members of any state board or commission for violation of
3 the criminal laws of this state where such violations have occurred
4 in connection with the performance of such members' official duties;

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

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

13 20. To investigate any report by the State Auditor and
14 Inspector filed with the Attorney General pursuant to Section 223 of
15 this title and prosecute all actions, civil or criminal, relating to
16 such reports or any irregularities or derelictions in the management
17 of public funds or property which are violations of the laws of this
18 state;

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

23 22. To represent and protect the collective interests of
24 insurance consumers of this state in rate-related proceedings before

1 the Insurance Commissioner or in any other state or federal judicial
2 or administrative proceeding;

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

7 24. To monitor and evaluate any action by the federal
8 government including, but not limited to, executive orders by the
9 President of the United States, rules or regulations promulgated by
10 an agency of the federal government or acts of Congress to determine
11 if such actions are in violation of the Tenth Amendment to the
12 Constitution of the United States; ~~and~~

13 25. To maintain data related to human trafficking and to assist
14 law enforcement, social service agencies, and victim services
15 programs in identifying and supporting victims of human trafficking;
16 and

17 26. To investigate and prosecute any civil or criminal action
18 relating to violations of the Oklahoma Open Records Act, Section
19 24A.1 et seq. of Title 51 of the Oklahoma Statutes, or the Oklahoma
20 Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma
21 Statutes, if the Attorney General determines that a civil or
22 criminal prosecution is warranted or to defer such matters to a
23 district attorney.

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

6 C. In all appeals from the Corporation Commission to the
7 Supreme Court of Oklahoma in which the state is a party, the
8 Attorney General shall have the right to designate counsel of the
9 Corporation Commission as the Attorney General's legally appointed
10 representative in such appeals, and it shall be the duty of the
11 Corporation Commission counsel to act when so designated and to
12 consult and advise with the Attorney General regarding such appeals
13 prior to taking action therein.

14 SECTION 3. It being immediately necessary for the preservation
15 of the public peace, health or safety, an emergency is hereby
16 declared to exist, by reason whereof this act shall take effect and
17 be in full force from and after its passage and approval.”
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1 Passed the Senate the 26th day of April, 2023.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2023.

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8 _____
9 Presiding Officer of the House
10 of Representatives

1 ENGROSSED HOUSE
2 BILL NO. 2287

By: Pfeiffer of the House

3 and

4 McCortney of the Senate

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

15 SECTION 4. 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
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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.

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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 5. This act shall become effective November 1, 2023.
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1 Passed the House of Representatives the 22nd day of March, 2023.

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3 _____
4 Presiding Officer of the House
5 of Representatives

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

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8 _____
9 Presiding Officer of the Senate