

Rationale for the town of Jet to expand its Open Records Policy to allow a camera while inspecting records and to honor requests for electronic records when they exist in that form -- Emphasis: Paul Blackledge 580 626 4678

- **Title 51 24A.2** From The Oklahoma Open Records Act
... The purpose of this 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.** ...
Link: <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=80289>
- **24A.3 Definition #1 Record** "Record" means **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.5 - Open and Confidential Records - All records of public bodies and public officials** shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours; provided:

The Oklahoma Open Records Act, Sections 24A.1 through 24A.28 of this title, does not apply to records specifically required by law to be kept confidential including: ...

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Attorney General Opinion

- **2006 OK AG 35:** ... The Act does not specify the means of copying, nor does it specify who is to copy the requested material. The last sentence of Section 24A.2 states, "Except as may be required by other statutes, public bodies do not need to follow any procedures for providing access to public records except those specifically required by the Oklahoma Open Records Act." Id. Nowhere in the Act does the law prohibit requesters of records from making copies of such records themselves, nor does it require that copies of the requested documents must be made by an employee of the public body. For years, companies or individuals have made manual notes and sometimes even microfilm of information in public records, such as recorded land title instruments. See *Am. First Abstract Co. v. W. Info. Sys., Inc.*, 735 P.2d 1187, 1188-89 (Okla. 1987).

A digital camera or an electronic scanner is a copying device, as are a pen and paper or a photocopy machine. As early as 1987, the Oklahoma Supreme Court recognized "copies" under the Act might include microfilm images or computer-compatible data. See *id.*; *Merrill v. Okla. Tax Comm'n*, 831 P.2d 634, 641 (Okla. 1992). More recently, the court held that a corporation seeking records of the Department of Corrections was entitled to those materials in a magnetic tape format, where the Department already had the records in such format. *Transp. Info. Serv., Inc. v. State ex rel. Okla. Dep't of Corr.*, 970 P.2d 166, 171-72 (Okla. 1998). ...

- **1999 OK AG 55:** ¶21 You asked in your fourth question whether the Department of Labor can require a member of the public to execute a written contract in order to obtain records of the Department. As with your second question, it is evident that the Department has not promulgated any rules to this effect. Thus, the Department does not have authority to require the execution of a written contract in order to obtain public records of the Department. ...
- **1999 OK AG 55:** ¶23 The policy of the Department provides that a written contract is required when the request for public records is for other than standard photocopies. However, **the Open Records Act does not distinguish between the form of public records.** See 51 O.S. 24A.3 (1998). **A public body must provide records in whatever form they exist.** If a public body does not keep a record in a certain form, the public body does not have to convert records to a certain form merely because a request to inspect or copy records refers to a specific form. See 51 O.S. 24A.18 (1991). The Department has no authority to place a burden on a request for a public record merely because the record is not easily photocopied. A requirement for a written contract, then, pursuant to the policy, would be inappropriate even if promulgated.

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Appended 8/16/2012

51 O. S. 24A.5 #3 and #6

3. Any request for a record which contains individual records of persons, and the cost of copying, reproducing or certifying each individual record is otherwise prescribed by state law, the cost may be assessed for each individual record, or portion thereof requested as prescribed by state law. **Otherwise, a public body may charge a fee only for recovery of the reasonable, direct costs of record copying, or mechanical reproduction.** Notwithstanding any state or local provision to the contrary, in no instance shall the record copying fee exceed twenty-five cents (\$0.25) per page for records having the dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One Dollar (\$1.00) per copied page for a certified copy. However, if the request:

a. is solely for commercial purpose, or

b. would clearly cause excessive disruption of the essential functions of the public body,

then the public body may charge a reasonable fee to recover the direct cost of record search and copying; however, publication in a newspaper or broadcast by news media for news purposes shall not constitute a resale or use of a record for trade or commercial purpose and charges for providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy. The fee charged by the Department of Public Safety for a copy in a computerized format of a record of the Department shall not exceed the direct cost of making the copy unless the fee for the record is otherwise set by law.

Any public body establishing fees under this act shall post a written schedule of the fees at its principal office and with the county clerk.

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.

The fees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information.

6. A public body shall designate certain persons who are authorized to release records of the public body for inspection, copying, or mechanical reproduction. **At least one person shall be available at all times to release records during the regular business hours of the public body.**

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Conclusion 8/16/2012

The Jet Oklahoma municipality has records on its computer which were created by software and the Information System computer for the town includes Internet service with e-mail. The Open Records Act requires the municipality to provide at least one person for releasing public records (24A.5 #6).. The Act limits the fee to the cost of copying the records and to the cost of the transporting storage media for taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants (24A5 #3).

Therefore requests for computer created records via e-mail should be honored because the taxpayers are already paying for the transporting storage media (Internet and e-mail) and the means to copy any electronic record (e-mail attachment).

The town clerk has custody of the records (§11-12-109). Honoring record requests is the duty of the records custodian. Policies counter to the Act should be ignored.

Any official in violation of the Act shall be guilty of a misdemeanor. (24A.17)