

Oklahoma's Open Records and Open Meeting Laws

ACCO New Officers Training
Dec. 7, 2022
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Not intended as legal advice.

When in doubt,
consult your district attorney.

The Statute provides the **letter** of the law:

But Courts and the state Attorney General *interpret* what the statute means.

To do so, they use the process of *Statutory Construction*.

Statute

Court Decisions

AG Opinions

What the Law
Means

Statutory Construction

- Interpret statute consistent with **legislative intent**.
(2016 OK 119, ¶ 15)
- Not what the judge wants the law to mean.

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Statutory Construction

- Ascertain from **whole act** based on its **general purpose** and **objective**.
- Consider **relevant provisions together** whenever possible to **give full force** and **effect to each**.
(2016 OK 119, ¶ 16)

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Statutory Construction

- Look to the **statute's language**.
- "We presume that the Legislature intends what it expresses."
(1995 OK 62, ¶ 5)
- Common words are given their "**plain and ordinary meaning**" unless "a contrary intention plainly appears."
(2002 OK 52, ¶ 13)

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Statutory Construction

- Don't presume Legislature intended an **absurd** result.
- Give the statute a **sensible** construction, bearing in mind the **evils intended to be avoided** or the **remedy afforded**. (1976 OK 14, ¶ 21)

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Oklahoma Open Meeting Act

[OKLA. STAT. tit. 25, §§ 301-314](#)

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What is the purpose of Open Meeting Act?

“Encourage and facilitate an informed citizenry’s understanding of the governmental processes and governmental problems.”

(Okla. Stat. tit. 25, § 302)

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Why is it important?

“Transparency in government provides citizens with the opportunity to observe their government and understand how its decisions are made. This idea forms the underpinning of Oklahoma's Open Meeting Act.”

(2020 OK AG 4, ¶1)

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Why is it important?

Legislature’s goal “was not simply to prevent or punish deliberate violations, but to restore *sadly sagging public confidence in government*, a goal which is hurt by every non-complying meeting regardless of whether or not the noncompliance resulted from evil motives.”

(1982 OK AG 212, ¶ 11)

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How to Apply the OMA

- “**Liberally** in favor of the public.”
- WHY?
 - Because the Open Meeting Act was “**enacted** for the **public’s benefit**.”
(1981 OK 95, ¶ 7)

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How to Apply the OMA

Must be given a construction that will **effectuate and not subvert** the Legislature’s intent to facilitate an informed citizenry’s right to participate in government and understand why government acts affecting their daily lives are taken. (1980 OK AG 215)

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How to Apply the OMA

- “Should be interpreted in such a way as to **avoid establishing potential evasion loopholes**.”
(1982 OK AG 212, ¶ 13)

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Public Bodies must

- Act within “both the **spirit** and **purpose** of the Open Meeting Act.” (1980 OK AG 144, ¶ 7)
- **Strictly adhere** to the statute. (1981 OK CIV APP 57, ¶ 20)

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What is Expected?

- Must operate with such openness that the ***citizenry is informed of its activities***. (2000 OK AG 7, ¶ 30)
- “When in doubt, the members of any board, agency, authority or commission should **follow the open-meeting policy of the State.**” (1981 OK CIV APP 57)

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Robert’s Rules of Order

- May apply when the Open Meeting Act is silent but ***cannot*** trump the statute’s requirements or prohibitions.

(1975 OK 147, ¶ 7)

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Meeting Defined

- “Should be assumed to include the ***entire decision-making process*** including deliberation, decision or formal action.”
(1982 OK AG 212, ¶ 3)
- Member may ***NOT obtain a consensus*** upon an item of business through a series of ***private one-on-one meetings***.
(1981 OK AG 69, ¶ 17)

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OMA Does NOT apply...

- Members of public body may gather at parties, dinners or other social events.
- But ***majority may not*** meet informally “to ***decide any action*** or to ***take any vote*** on any matter.”
- ***Majority may*** gather informally as long as “***no business of the public body is discussed.***”

(§ 304(20))

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Consequences for Non-Compliance

Who can sue over violation of Open Meeting Act?

- **Anyone.**
- **DON'T** have to prove *individually injured* by the alleged violation. (§ 314(B)(1))

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Lawsuits

- Successful plaintiff “shall be entitled to reasonable attorney fees. (§ 314(B)(2))
- Also recover court costs at judge’s discretion. (tit. 12, § 930)

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MISDEMEANOR

- Maximum
 - \$500 fine & 1 year in county jail (§ 314(A))
- Entitled to jury trial.

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MISDEMEANOR

- As a penal statute, OMA must be *strictly construed*.
- State need only prove a willful failure to comply. ***Criminal intent need not be proved*** because *conduct is illegal by virtue of OMA*. (1981 OK CR 78, ¶ 5)
- Prosecutors ***don't have to prove injury***. (1981 OK CR 78, ¶ 8)

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MISDEMEANOR

- Nowata city commissioners
 - suspended 1-year sentences
- Boynton town trustees
 - suspended 1-year sentences & \$500 fines
 - deferred 1-year sentence & \$250 fine

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Action Declared Invalid

- Any action taken in “willful violation” of the Open Meeting Act is “invalid.” (§ 313)
- ***Acting upon advice of an attorney did not excuse a public body's violation of the Open Meeting Act.*** (2009 OK CIV APP 51, ¶ 17)

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What does “willful” mean?

- “Willfulness does ***not*** require a showing of ***bad faith, malice, or wantonness***, but rather, ***encompasses conscious, purposeful*** violations of the law ***or blatant or deliberate disregard of the law by those who know, or should know*** the requirements of the Act.” (1984 OK 95, ¶ 14)

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What does “willful” mean?

“If willful is narrowly interpreted, if actions taken in violation of the Act could *not* be set aside unless done in bad faith, maliciously, obstinately, with a premeditated evil design and intent to do wrong, then the public would be ***left helpless to enforce*** the Act most of the time and ***public bodies could go merrily along, in good faith, ignoring the Act.***”

(1981 OK CIV APP 57, ¶ 26)

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FOIA vs. Open Records Act

Freedom of Information Act

- Federal Agencies
- Federal court

Oklahoma Open Records Act

- State & Local Governments
- State court

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Open Records Act

Okla. Stat. tit. 51, §§ 24A.1 to 24A.31

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What is the purpose of the Open Records Act?

- Oklahomans “are vested with the ***inherent right to know*** and ***be fully informed*** about ***their government.***”

(Okla. Stat. tit. 51, § 24A.2)

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What is the purpose of the Open Records Act?

- “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.*”

(Okla. Stat. tit. 51, § 24A.2)

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Why is it important?

- “Openness in government is **essential** to the functioning of a **democracy.**” (2011 OK 68)

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Why is it important?

- **WHY** ensure public access to government records:
 - *Verify accountability* of *government officials.*
 - Checks against *arbitrary exercise* of *official power* and *secrecy* in the *political process.*
 - *Monitor* the *manner* in which public officers discharge their public *duties* and ensures that such actions are carried on in an *honest, efficient, faithful, and competent manner.*

(2011 OK 68; 2014 OK 36)

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OPEN RECORDS ACT

- To fulfill that purpose, the Act imposes a **duty** on public agencies to provide records to the public.
- “**All records** of public bodies and public officials shall be **open** to **any person** for **inspection, copying, or** mechanical reproduction **during regular business hours.**”

(Okla. Stat. tit. 51, § 24A.2)

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OKLAHOMA OPEN RECORDS ACT

- “**Non-disclosure**” or “**non-disparagement**” agreement does **NOT** supersede ORA. (2017 OK CIV APP 4, ¶ 8)
- “May **not** circumvent the Act by placing material otherwise subject to disclosure **solely** in the **custody** of a **non-public body** or **person**.” (2017 OK CIV APP 4, ¶ 9)

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OPEN RECORDS ACT

- Records policies and procedures of agencies “must be in the **letter** and **spirit** of the Open Records Act.” (1999 OK AG 55, ¶ 22)

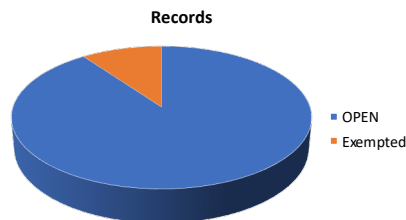
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Presumption of Openness

- All records are **PRESUMED OPEN UNLESS** specifically exempted by statute. (2003 OK 65, ¶ 12)



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OPEN RECORDS ACT

- **Agency denying access** to a record bears the **burden** of **proving** that a **statutory exemption applies** to the record. (2003 OK 65, ¶ 12)
- “**Disclosure** is to be **favored over** a finding of **exemption**.” (1986 OK 24, ¶ 22)

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Redaction

- Must release of “**any reasonably segregable portion**” after the exempt portion has been deleted, or redacted.
(OKLA. STAT. tit. 51, § 24A.5(2))
- Open Records Act’s procedures for providing access to records are “either ‘inspection, copying, and/or mechanical reproduction,’ **or ‘deletion of the exempt portions.’**”
(1986 OK 24, ¶ 22)

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Is the Information a Record?

- **Email, text messages** and **other communications created, received, transmitted** or **maintained** by government officials on publicly and **privately** owned equipment and devices **are public** if **made** or **received** in connection with
 - **Transaction of Public Business,**
 - **Expenditure of Public Funds, or**
 - **Administration of Public Property.** (2009 OK AG 12)

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Consequences for Non-Compliance

Lawsuits

- **Anyone denied access** to a record may file a civil lawsuit to gain access. (§ 24A.17(B)(1))
- If requested documents *are released, lawsuit can continue if ...*
 - Challenged action was *too short in duration* to be *fully litigated*; and
 - *Reasonable expectation* that plaintiff would be *subjected to the same action again.* (2009 OK)

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Lawsuits

- Successful *plaintiff* shall be entitled to *reasonable attorney fees*. (§ 24A.17(B)(2))
- Yukon public schools - \$18,000
- Grove - \$28,000
- Claremore - \$41,000
- Norman - \$60,000 + Cleveland Co. DA - \$10,000

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MISDEMEANOR

- Maximum = \$500 fine and 1 year in county jail. (§ 24A.5(2))
- Entitled to jury trial
- Two Grove officials – deferred 1-year sentences and \$300 and \$100 fines respectively
- Boynton Clerk/Treasurer – suspended 1-year sentence and \$500 in fines

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NO CIVIL LIABILITY FOR COMPLIANCE

- Public officials providing access to records in accordance with the Open Records Act *cannot be held civilly liable* for damages. (§ 24A.17(C))

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