

# Understanding Oklahoma's Open Meeting Act & Open Records Act

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General Counsel to the Attorney General





# Transparency



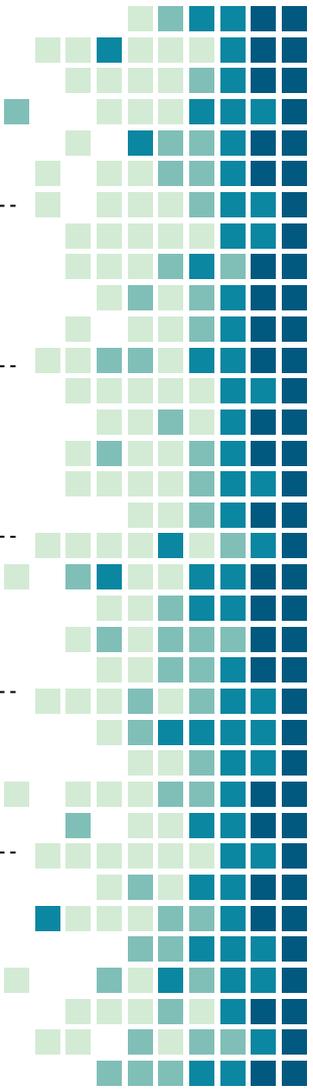
# The Open Meeting Act

Title 25 O.S. §§ 301-314

# Overview



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- 1 When is the Act triggered?
  - 2 What actions must be taken before meetings?
  - 3 What procedures must be followed during meetings?
  - 4 What consequences may ensue from violations of the Act?
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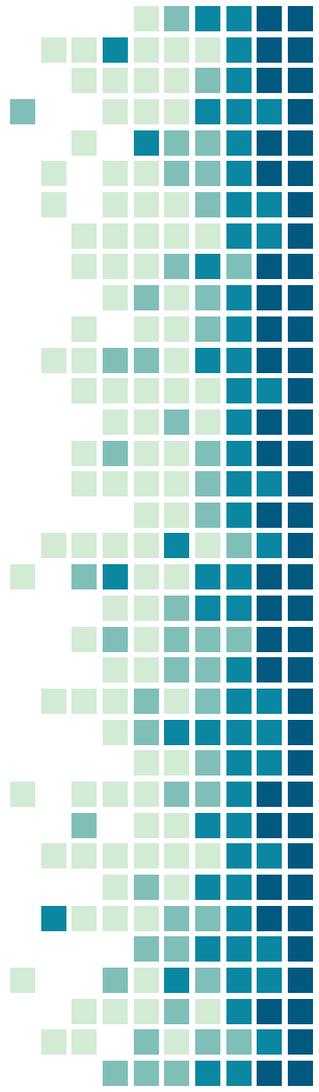


1.  
When is the OMA  
triggered?

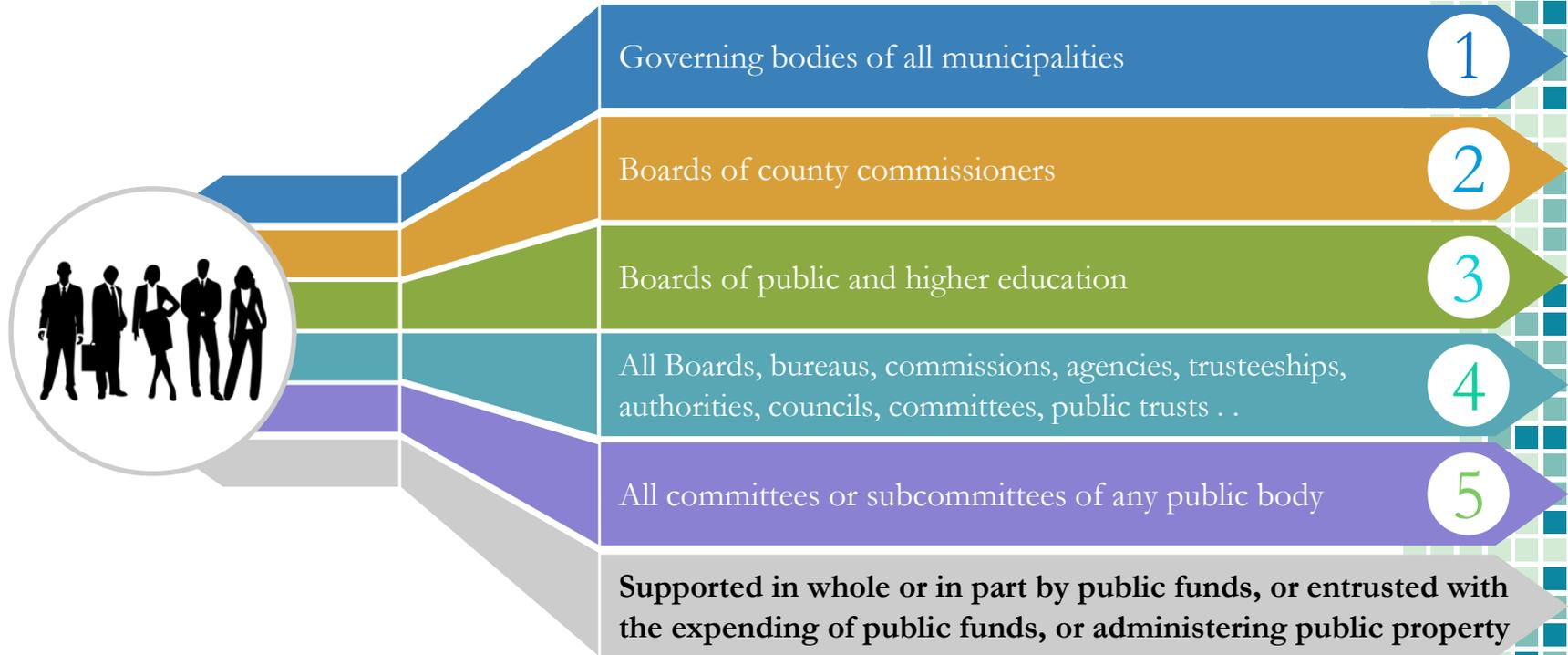


# When is the OMA triggered?

- Every regular, special, emergency, or reconvened *meeting* of a *public body* shall be open, except as provided by the Act.
- The Act applies when there is a:
  - majority of a public body together,
  - and that public body is conducting the business of the public body
- “**Public body**” and “**meeting**” are both defined by statute.



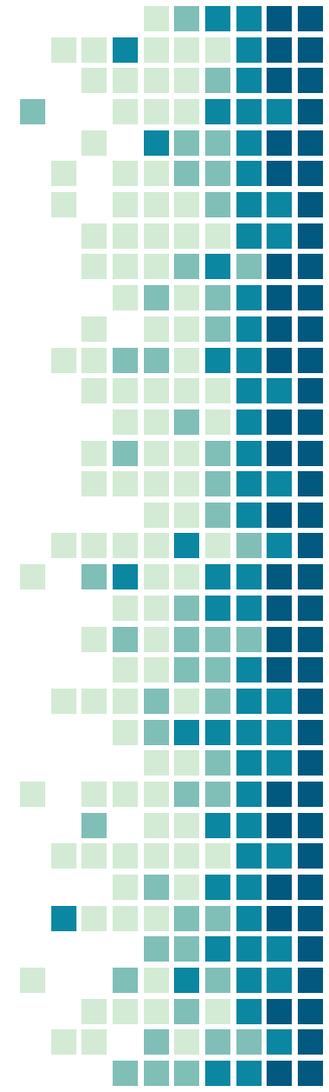
# “Public Body” Defined



# Public Body Does Not Include

- Judiciary
- Legislature and legislators
- Administrative staff of public bodies (including faculty meetings and athletic staff meetings of institutions of higher ed when not meeting with public body)
- Other specific exceptions per statute, i.e. racing stewards, Council on Judicial Complaints, etc.

25 O.S. § 304(1)



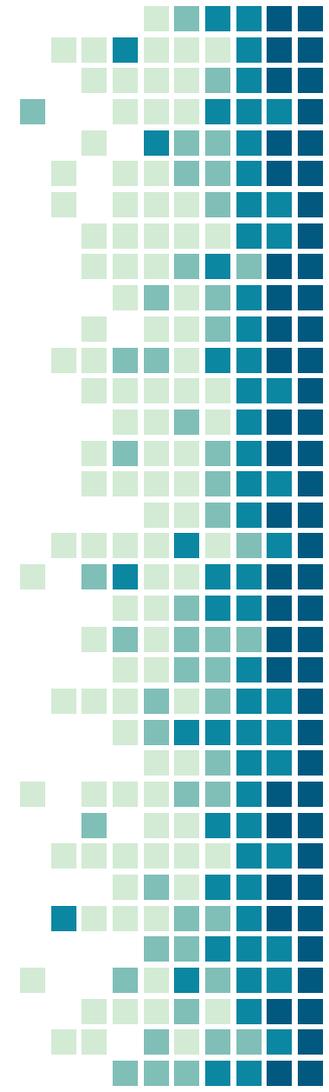
# Public Body Does Not Include

- Committees that are purely fact finding, information, recommendatory, or advisory with no decision-making authority.
  - *Andrews v. Ind. School District No. 29 of Cleveland Co.*, 1987 OK 40, 737 P.2d 929.
- Private organizations which contract to provide goods or services to the public on behalf of a governmental agency and receive payment from public funds merely as reimbursement for goods or services provided.
  - 2002 OK AG 37.

# “Meeting” Defined

- When conducting business of a public body
- By a majority of its members
- Being personally together, OR, by teleconference, as authorized by § 307.1
- **Note:** a “meeting” does not include informal gatherings of a majority of members when no business of the public body is being discussed. 25 O.S. § 304(2).

25 O.S. § 304(2)



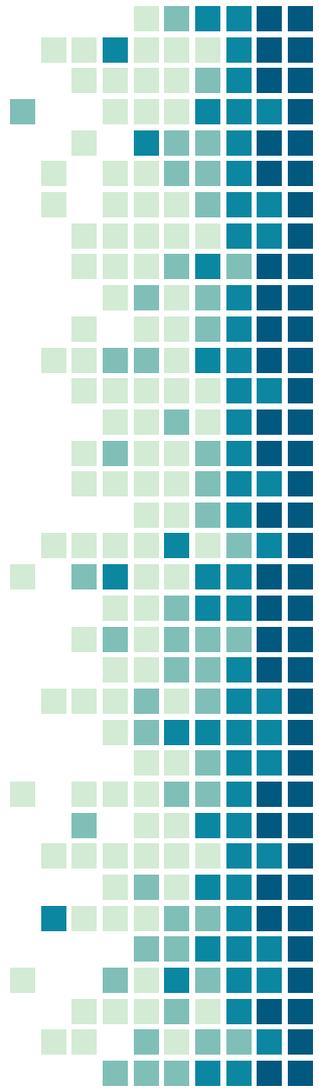
# Electronic and Telephonic Communications

- Prohibits deciding or taking action (voting) on any matter by phone or email
- Also prohibits deciding or taking action on any matter at an “informal gathering”
- ***Caution!*** Discussion in a group email/social media group can create a virtual meeting subject to the OMA.

# Hypothetical: Post-Board Meeting Lunch

- Does the OMA apply?
- Best Practice: majority of body's members should not attend lunch together
- **Note:** If members insist on a group lunch, announce it at the end of the meeting, and invite everyone to join the public body.

25 O.S. § 306



2.

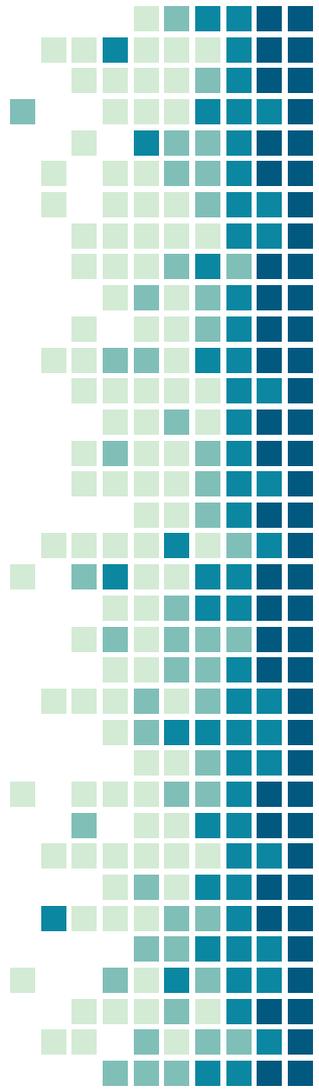
What actions must  
be taken before  
meetings?



# Required Pre-Meeting Actions

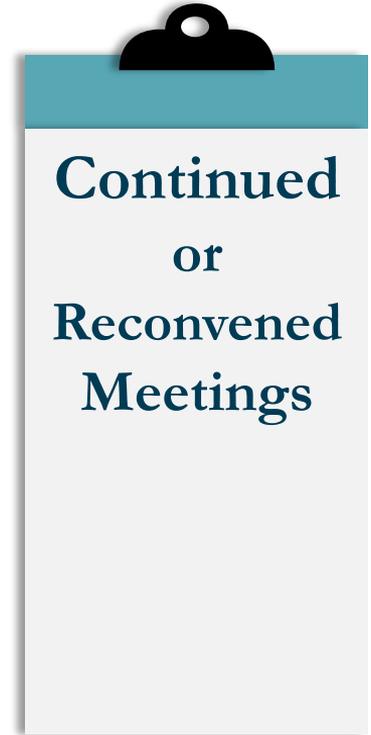
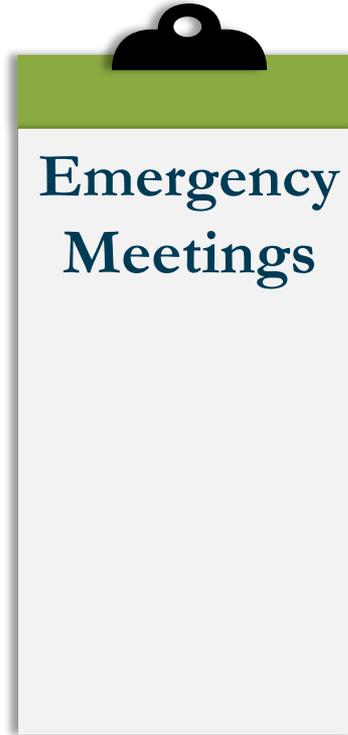
Provide Notice

Post Agenda



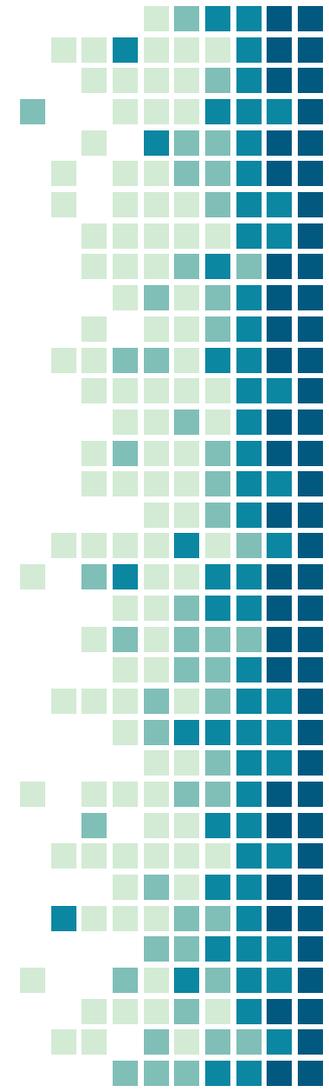
# Four Types of Meetings

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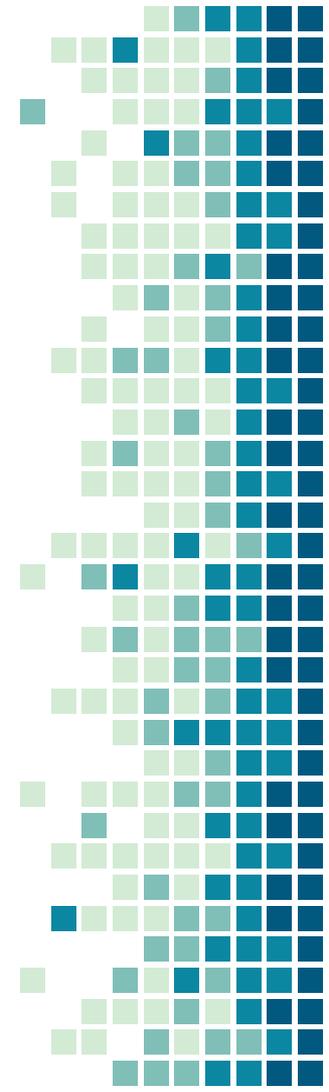
# Provide Notice: Regular Meetings

- ***When?***
  - Annually by December 15 for the next calendar year
  - Include *date, time, and place* of meetings
  - Regular meetings can be changed with 10 days notice to the appropriate office, and limited new business is permitted



# Provide Notice: Regular Meetings

- *To whom?*
  - **State public bodies:** Secretary of State
  - **County public bodies:** County Clerk of the county where the body is principally located
  - **Municipal public bodies:** municipal clerk



## ANNUAL NOTICE OF REGULARLY SCHEDULED PUBLIC MEETINGS

*(This form may be used for annual reporting of regularly scheduled public meetings for the following year. For reporting special meetings and changes to regularly scheduled meetings, use NOTICE OF SPECIAL MEETING OR CHANGES TO REGULARLY SCHEDULED MEETING form.)*

To be filed with Secretary of State's Office of Administrative Rules by **December 15**  
As required by Open Meeting Act [25 O.S., §§ 301 et seq.]

NAME OF PUBLIC BODY:

*(IMPORTANT: The public body's name should be typed exactly the same each time you file a notice. If not worded the same each time, notices may be posted and filed under alternate forms of the name, rather than all together under one name. If not certain of wording previously used, go to Meeting Notices Online at [sos.ok.gov/meetings](http://sos.ok.gov/meetings) (agency and search by key word to find wording used on website.)*

ADDRESS: 1915 North Stiles Avenue - Suite 200  
Oklahoma City, OK 73105-4915

CONTACT PERSON:  
TELEPHONE:

SIGNATURE: \_\_\_\_\_

(If emailing form, type name of person authorized to sign form) DATE: November 2, 2018

RECEIVED

NOV 02 2018

OKLAHOMA SECRETARY  
OF STATE

3:59 PM

### Regularly Scheduled Meetings for: 2019

*(Identify year)*

<u>Date</u>	<u>Time</u>	<u>Location</u>
January 9	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
February 13	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
March 13	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
April 10	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
May 8	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
June 12	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
July 10	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
August 14	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
September 11	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
October 9	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
November 13	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
December 11	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915

*(Attach additional pages, if needed)*

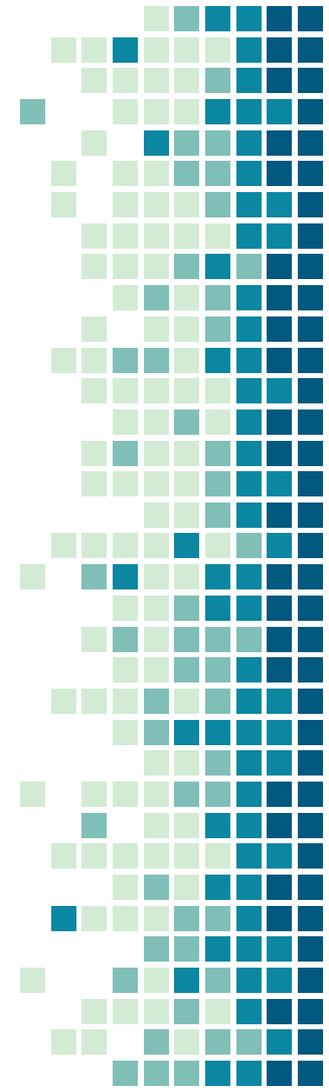
#### MAIL, DELIVER, OR EMAIL AS FOLLOWS:

Secretary of State/Office of Administrative Rules  
421 NW 13<sup>th</sup> Street, Suite 220  
Oklahoma City, OK 73103  
Phone: 405-521-4911  
Email: [meetingnotices@sos.ok.gov](mailto:meetingnotices@sos.ok.gov)

**NOTE:** If you would like to post future meeting notices directly to the website and eliminate the need for filing paper copies, [click here](#) or contact the Office of Administrative Rules for a user ID and password.

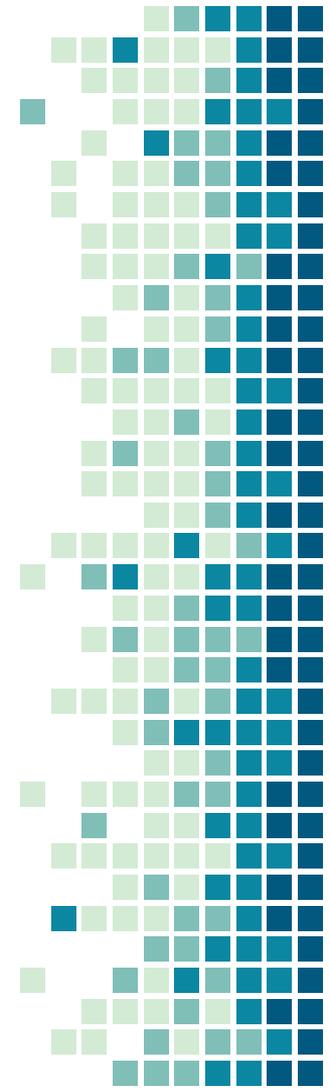
# Provide Notice: Special Meetings

- **When:** 48 hours notice of date, time, and place
  - Excludes Saturdays, Sundays, and State holidays
- **Form:** includes notice
  - **Notice:** in writing, in person, or by telephonic means to the proper record keeping official (i.e. SOS, county clerk) AND to those who have filed written requests to receive notice of a meeting



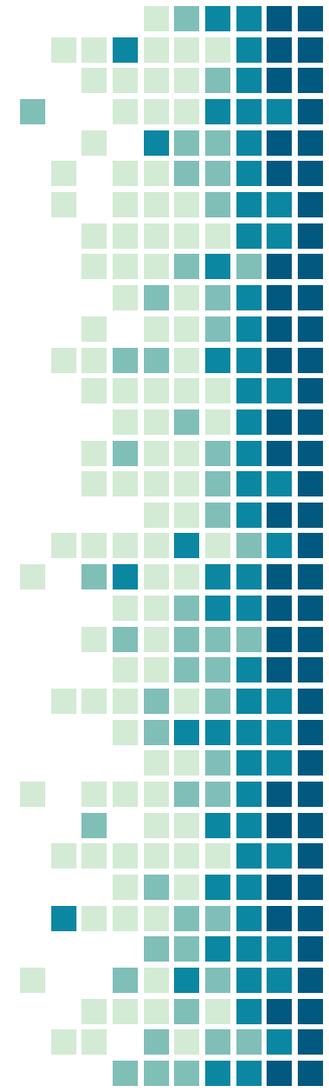
# Provide Notice: Emergency Meetings

- **Defined:** “[A] situation involving injury to persons or injury and damages to public or personal property or immediate financial loss when the time requirements for public notice of a special meeting would make such procedure impractical and increase the likelihood of injury or damages or immediate financial loss”
- **When:** Give advance notice that is reasonable and possible under the circumstances.
- **Form:** Give notice as soon as possible, whether in person, by phone, or electronic means.



# Provide Notice: Continued or Reconvened Meetings

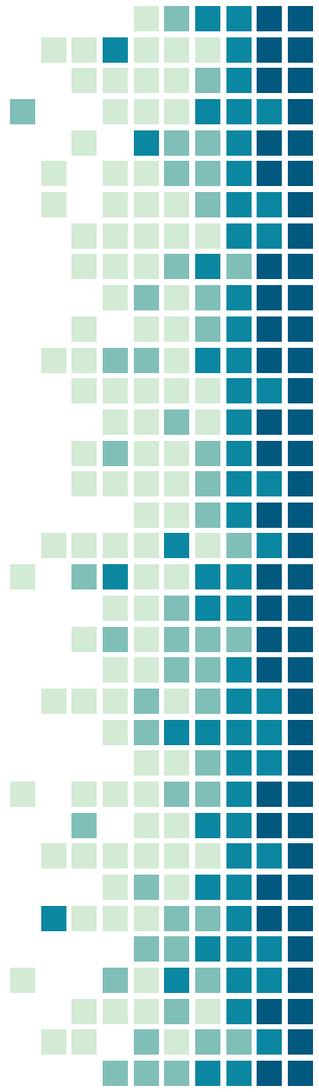
- ***When:*** Announce date, time, and place of continued/reconvened meeting at original meeting



# Required Pre-Meeting Actions

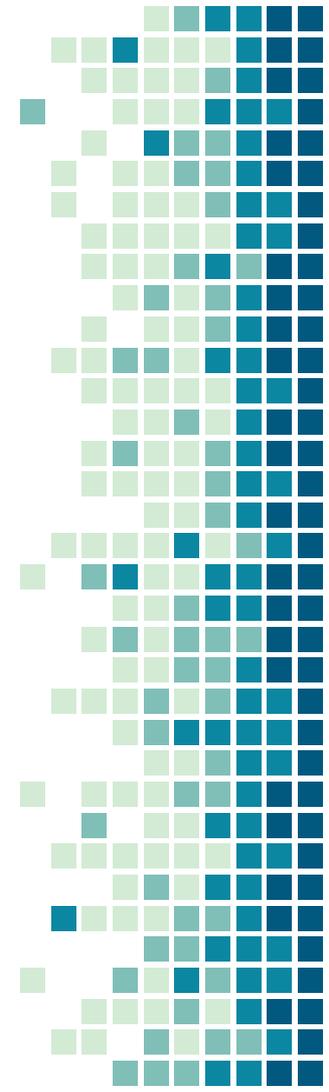
Provide Notice

Post Agenda



# Post the Meeting's Agenda

- **When:**
  - **Regular Meeting:** Display agenda 24 hours prior to meeting, excluding Saturday, Sunday, and Oklahoma State holidays
    - *Ex: Meeting is at 10:00 a.m. on Monday, so agenda must be posted no later than 10:00 a.m. the Friday before.*
  - **Special Meeting:** Notice posted 48 hours in advance and agenda posted 24 hours prior to meeting



# Post the Meeting's Agenda

- **Where:**

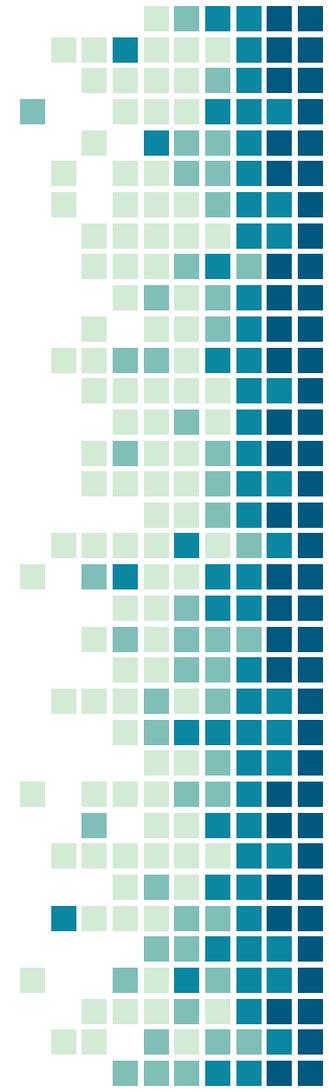
1. Post notice and agenda at principal office (or location of meeting if no office exists)

- *Must be visible to the public the entire 24 hours before the meeting begins*

OR

2. Post on public body's website

- Must also maintain an email distribution system and send notice to this group no less than 24 hours in advance,
- *AND*, post notice and agenda at the principal office (or location of meeting) during normal business hours at least 24 hours in advance



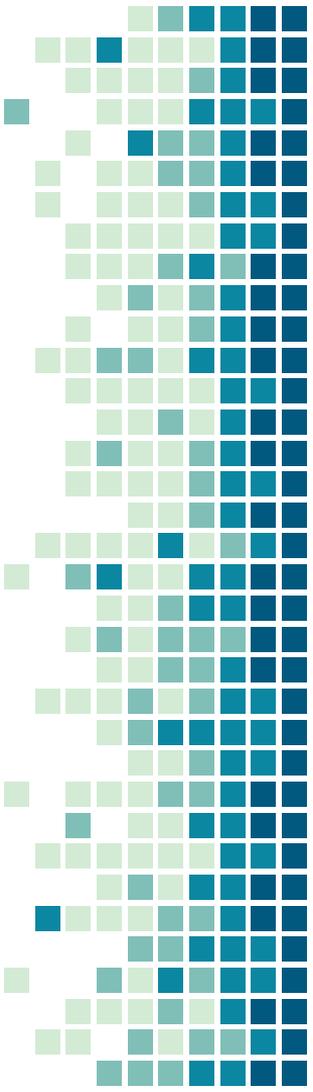
# Post the Meeting's Agenda

- *What?*

Must contain sufficient information for the public to identify the items of business and the purpose. 25 O.S. § 311(B).

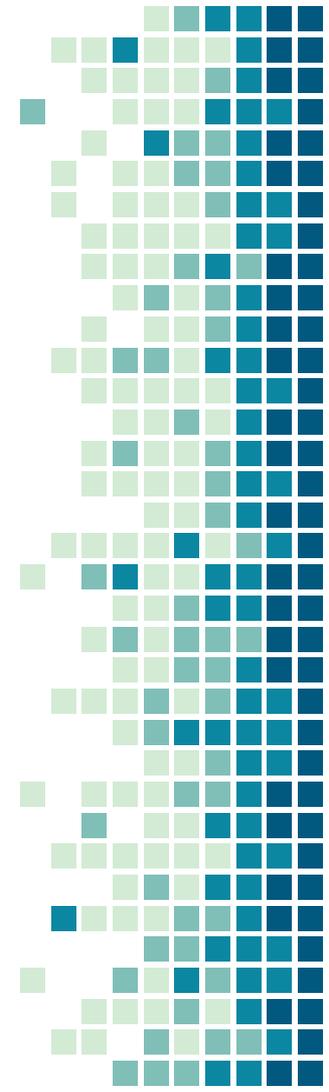
*“Agendas [must] be worded in plain language, directly stating the purpose . . . The language used should be simple, direct and comprehensible to a person of ordinary education and intelligence.”*

*Haworth Bd. of Ed. v. Havens,*  
637 P.2d 902, 904 (Okla. Civ. App. 1981).



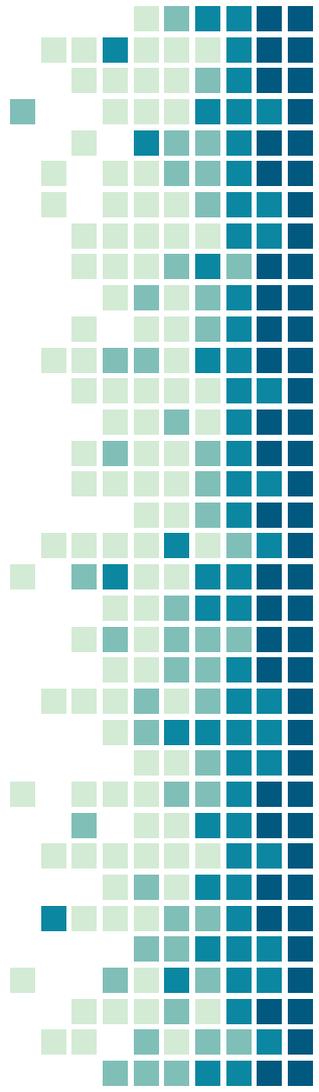
# Agendas

- Cannot take action if the action is not on the agenda
- Cannot be vague
  - *Ex: “Executive Director’s Report”*
    - Needs more detail on what the report will cover.
- List *proposed* executive sessions
- New Business only permitted at regularly scheduled meetings



# New Business

- Defined: “Any matter not known about or which could not have been reasonably foreseen prior to the time of posting [the agenda].”
  - *New Business is NOT what someone forgot needed to be on the agenda.*
- To consider new business at a regular meeting, timely post an agenda containing an item called “new business.”
- **New business is only allowed at a regular meeting**
- **Caution!** Use sparingly, only when not reasonably foreseeable prior to posting the agenda.



# Failed Agenda Example

Agenda said purpose of the meeting was to:

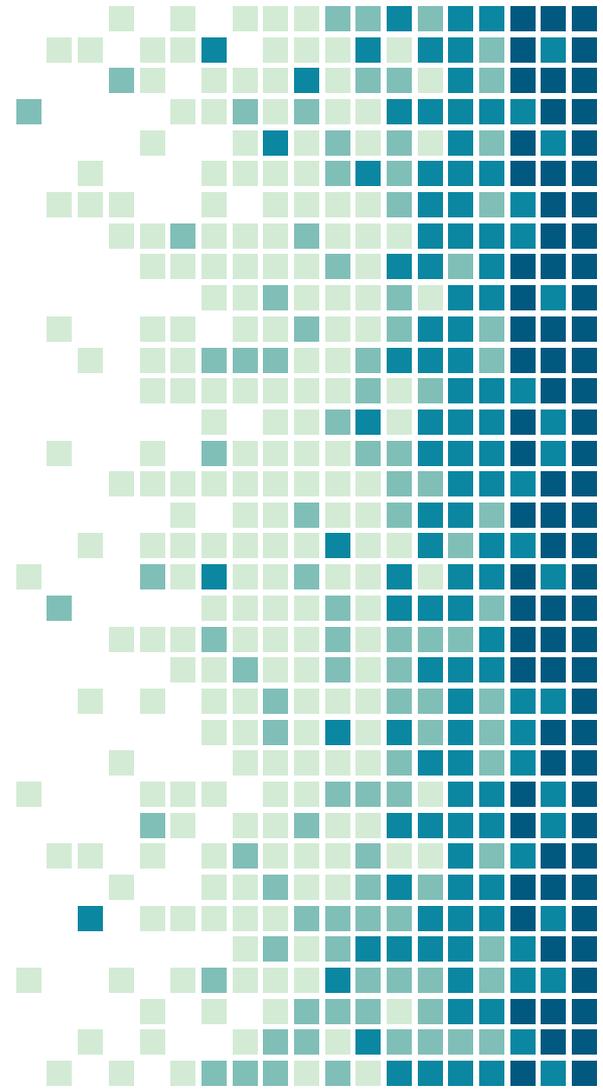
1. Appoint new board member.
2. Interview a new administrator.
3. Hire principals.

- The court found the agenda was deceptively vague and a willful violation where the school board hired a superintendent.

*Haworth Bd. of Ed. v. Havens*, 637 P.2d 902 (Okla. Civ. App. 1981).

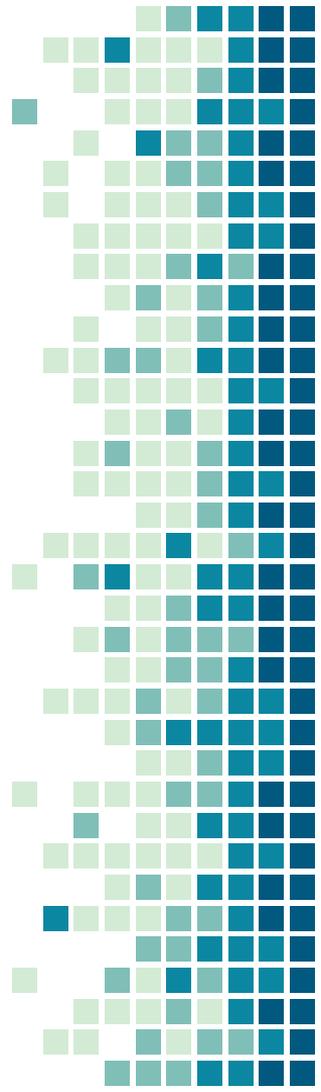
- **\*Best Practice:** Be specific and clear. Do not vaguely refer to the action planned to be taken or discussed.

3.  
What actions must  
be taken during  
meetings?



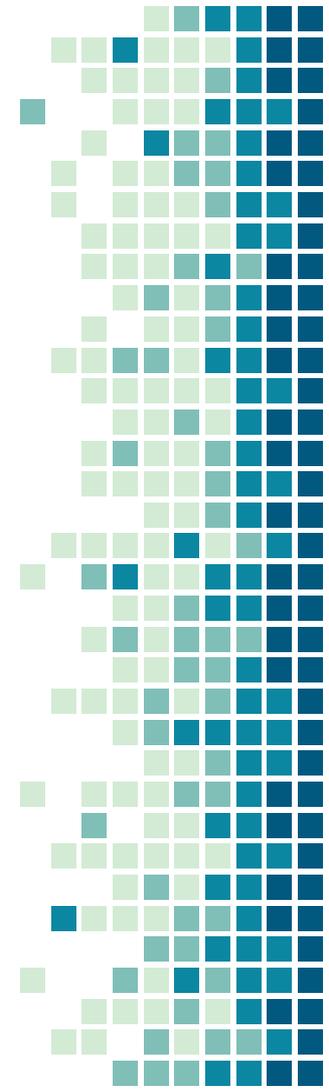
# When and Where to Hold Meetings

- Meetings “shall be held at specified times and places which are convenient to the public”
- Use good judgment
  - Not a locked courthouse on a public holiday.  
*Rogers v. Excise Bd.*, 1984 OK 95, 701 P.2d 754.



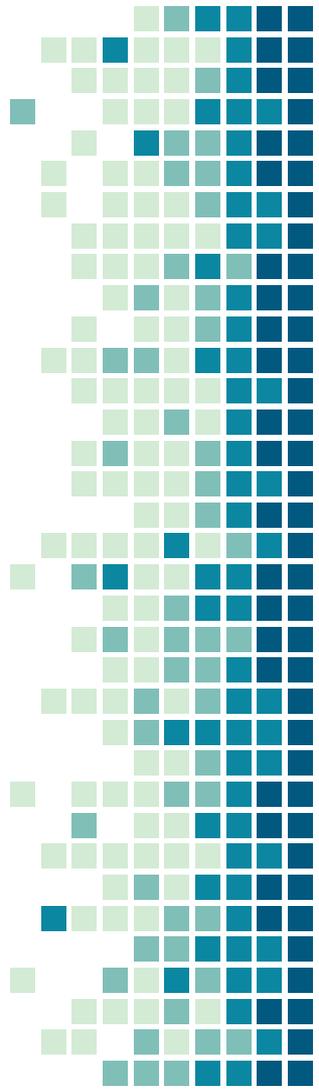
# Recording Votes

- The vote of each member must be both:
  - Publicly cast, AND
  - Recorded
- Section 306's prohibition on informal gatherings ensures actions are taken publicly and recorded
- **Caution!** Failure to meet both requirements results in the action being invalid. *Oldham v. Drummond Bd. of Ed.*, 1975 OK 147, 542 P.2d 1309.



# Recording Votes

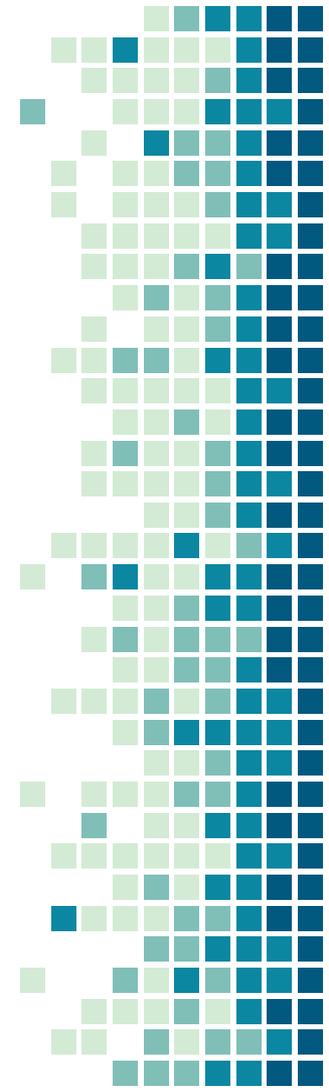
- Must record the vote of each individual member at a meeting
- If vote is unanimous, it is sufficient to record “5-0 in favor of...” *Graybill v. Oklahoma State Bd. of Educ.*, 1978 OK 124, 585 P.2d 1358.
  - However, best practice is to record how each individual voted, including yes and no votes, and whether there were any abstentions.



# Minutes

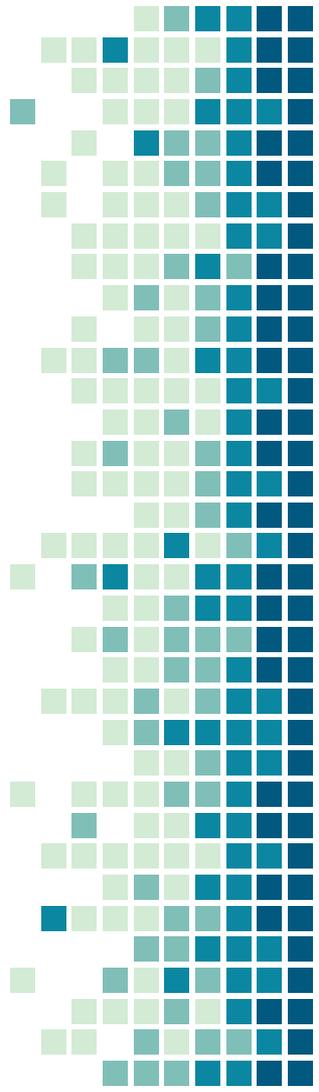
Minutes must be written and include:

- Official *summary* of the proceeding
- Identification of:
  - all members present and absent (2012 OK AG 24)
  - all matters considered
  - all actions taken
- Should reflect manner and time notice was given
- Any person may record the meeting, provided it does not interfere with the meeting
- Note: Minutes of public meetings are open records.



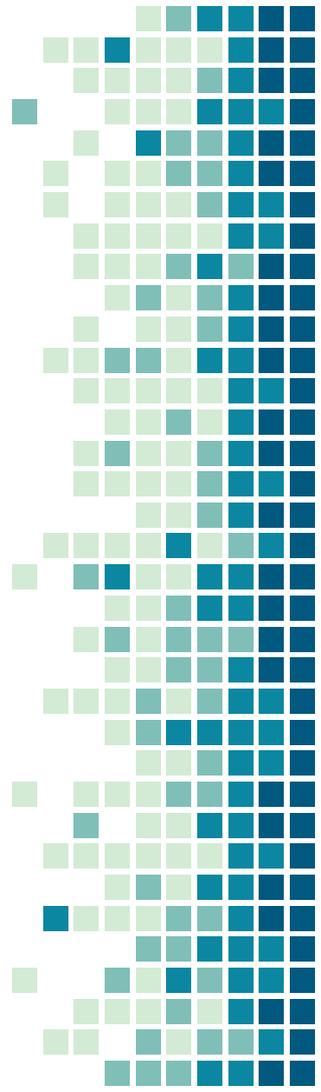
# Minutes

- Minutes must be taken in Executive Session.  
*Berry v. Bd. of Gov. of Registered Dentists*, 1980 OK 45, 611 P.2d 628.
  - However, minutes taken in Executive Session may be kept confidential under the Open Records Act.  
51 O.S. § 24A.5(1)(b).
- Minutes for Emergency Meetings: § 312(B)
  - Must state nature of emergency
  - Must include reasons for declaring emergency meeting



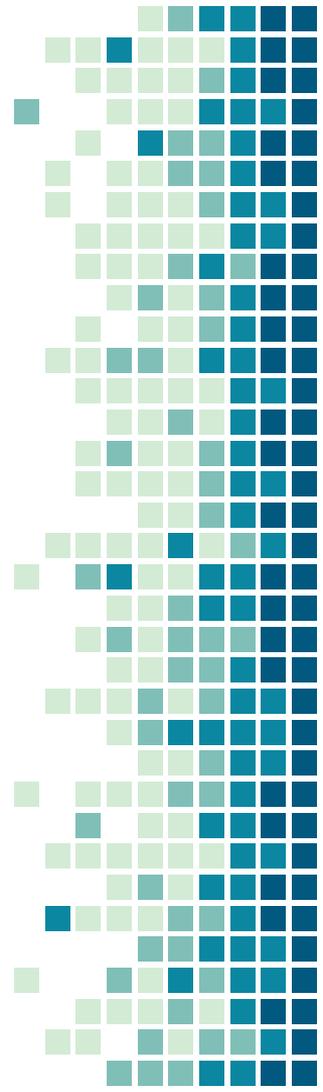
# Public Comment

- Public Comment: A public body is not required to provide opportunity for citizens to speak (2002 OK AG 26; 1998 OK AG 45).
  - If public body chooses to allow public comment, it is advisable to set policy.
  - Could limit comments to agenda items only and/or set a time limit.
  - Public body should be careful not to discuss topics on the agenda during public comment portion of meeting.



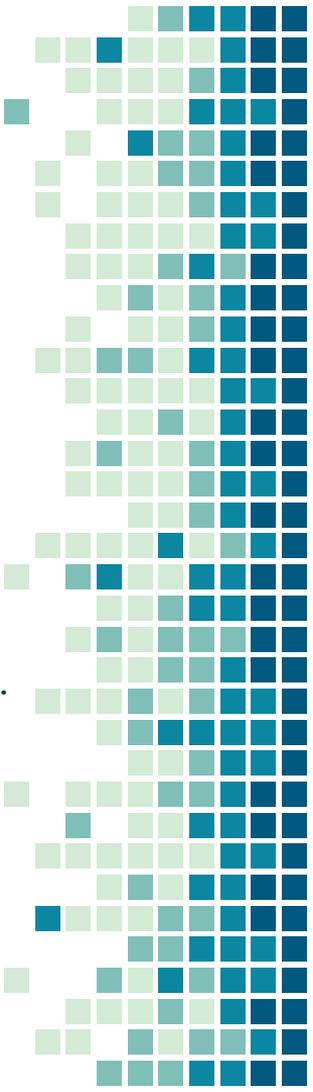
# Executive Sessions

- **General Rule:** No executive sessions unless specifically authorized in § 307 or another statute.
- **Limited Permissible Purposes:**
  - Personnel matters (25 O.S. § 307(B)(1))- construed narrowly
    - Not job openings (2006 OK AG 17)
    - Not hiring independent contractors (2005 OK AG 29)
    - Must identify individual or unique position (1997 OK AG 61)
  - Purchase or appraisal of real property (25 O.S. § 307(B)(3))
  - Confidential communications with attorney concerning pending investigation, claim or action (25 O.S. § 307(B)(4))
  - Other specific statutes
- **Violation:** Criminal liability and minutes and records of the executive session shall be made public



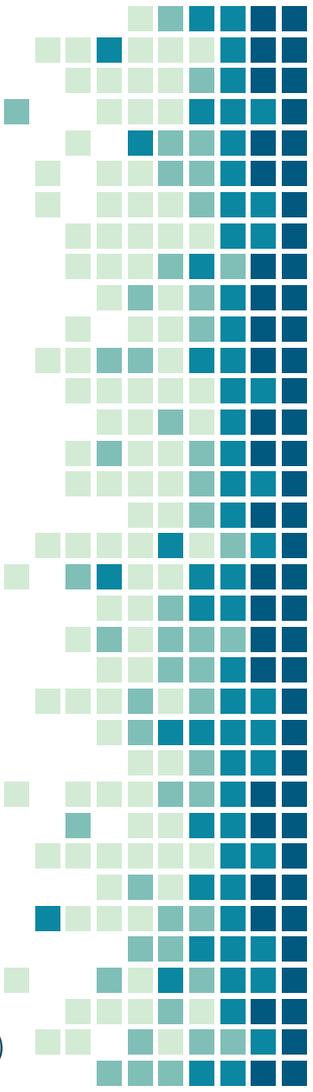
# Executive Sessions

- **Special Procedures-Convening Executive Session:**
  - *Proposed* executive session must be noted on agenda.  
(25 O.S. § 311(B) and 82 OK AG 114).
    - Include specific citation to which provision of § 307 authorizes the executive session. (25 O.S. § 311(B)(2)(C)).
  - Must take vote at the meeting to go into executive session and have majority of quorum to convene executive session. (25 O.S. § 307(E)(2)).
  - No executive session by videoconference (25 O.S. § 307(B)).



# Executive Sessions

- **Special Procedures-Deliberation Only:**
  - Votes cannot be taken in executive session.
    - Can discuss, but actions arising out of executive session must be taken in an open meeting.
  - Must take and keep minutes (i.e. what happened, who was there). *Berry v. Bd. of Gov. of Registered Dentists*, 1980 OK 45, 611 P.2d 628.
  - Must vote to come out of executive session and record those votes publicly



# Executive Session Agenda Item: Example 1

**Proposed executive session:** Possible discussion and vote to enter Executive Session *pursuant to 307(B)(4)*<sup>1</sup> for confidential communications between Board and its attorney concerning the *pending tort claim filed by John Doe*<sup>2</sup> against the Board, where the Board's attorney has determined disclosure *will seriously impair* the ability of the Board to process the claim in the public interest.<sup>3</sup>

1. *State applicable 307(B) provision (§ 311(B)(2)(c)).*
2. *Identify the claim, investigation, or proceeding.*
3. *Board's attorney must make determination if 307(B)(4) used.*

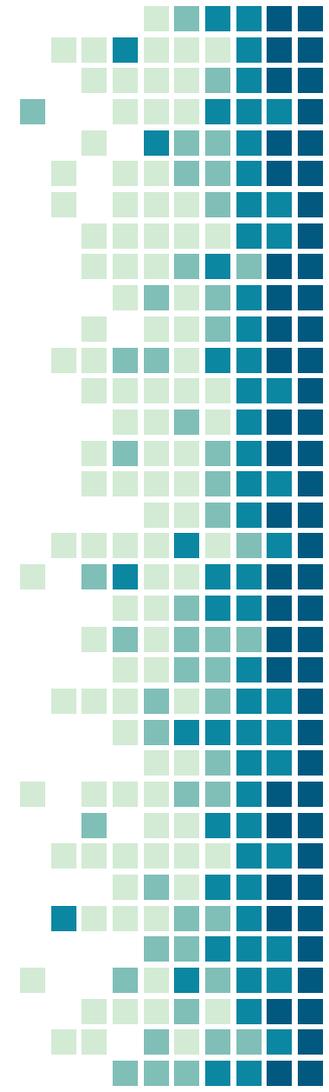
# Executive Session Agenda Item: Example 2

**Proposed executive session:** Possible discussion and vote to enter Executive Session *pursuant to 25 O.S. § 307(B)(1)*<sup>1</sup> to discuss annual review of Executive Director and *possible merit raise increase*<sup>2</sup> for Executive Director.<sup>3</sup>

1. Citation to specific 307(B) provision (§ 311(B)(2)(c)).
2. Salary and evaluations can be discussed in Executive Session (1996 OK AG 40).
3. Name or unique position identified. (1997 OK AG 61).

# Teleconference

- Permissible, but certain conditions must be met:
  - Audio **and** visual at each site- “videoconference”
  - Must have quorum of public body at agenda site
  - Notice and agenda must list video sites
  - Notice and agenda must identify each member and site from which each will participate
  - Off-site location must be in district
  - Public must have access to all sites, including the off-site location
  - No executive sessions



4.

What consequences  
may ensue from  
violations of the  
OMA?



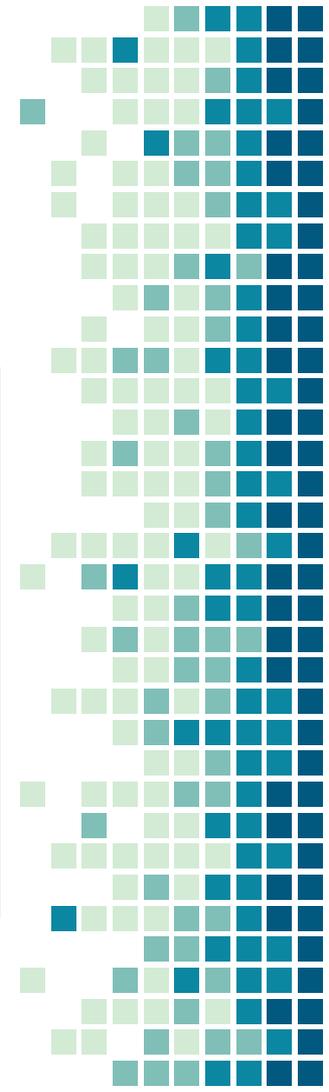
# Penalties and Remedies Under the OMA

## Civil Implications

- ❖ Actions taken in willful violation are invalid. 25 O.S. § 313.
- ❖ Minutes of an Executive Session will be made public where the OMA is willfully violated. 25 O.S. § 307(F)(2).
- ❖ Any person can bring a civil action. 25 O.S. § 314(B).
- ❖ Successful party is entitled to reasonable attorney fees

## Criminal Penalties

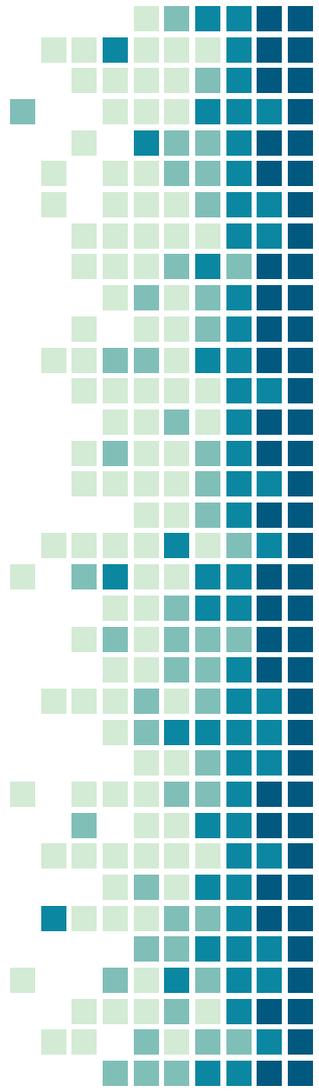
- ❖ Any willful violation of the provisions of the Act are punishable
- ❖ Misdemeanor offense
- ❖ Fine up to \$500 and/or up to one (1) year in the county jail. 25 O.S. § 314.



# Willful Violation

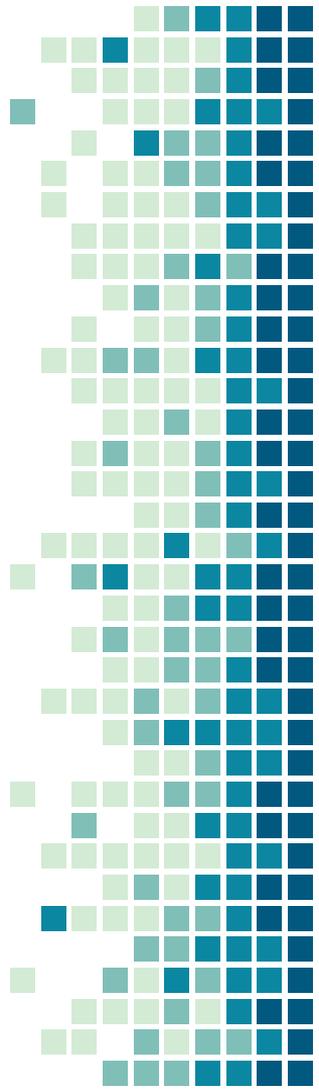
- “The Act provides that any action taken in willful violation shall be invalid. Willfulness does not require a showing of bad faith, malice, or wantonness, but rather, encompasses *conscious, purposeful violations of law* or *blatant or deliberate disregard of the law by those who know, or should know* . . . Notice of meetings of public bodies which are deceptively vague or likely to mislead constitute a willful violation.”

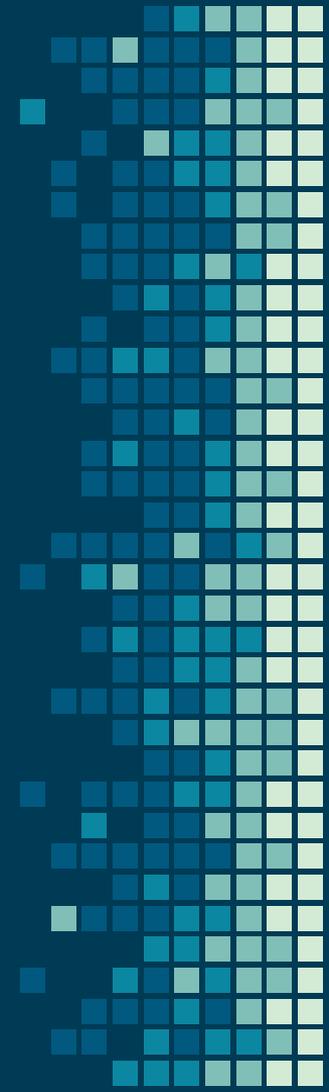
*Rogers v. Excise Bd. of Greer County*, 1984 OK 95, 701 P.2d 754.



# How to Correct an OMA Mistake

- If not in compliance with OMA when an action is taken, the act will be invalid.
- The public body should redo its action in conformity with the OMA.
- How? Depends on the type of mistake.
  - Give proper public notice and put item on next meeting's agenda
  - Re-vote and record the decision in the public meeting





# The Open Records Act

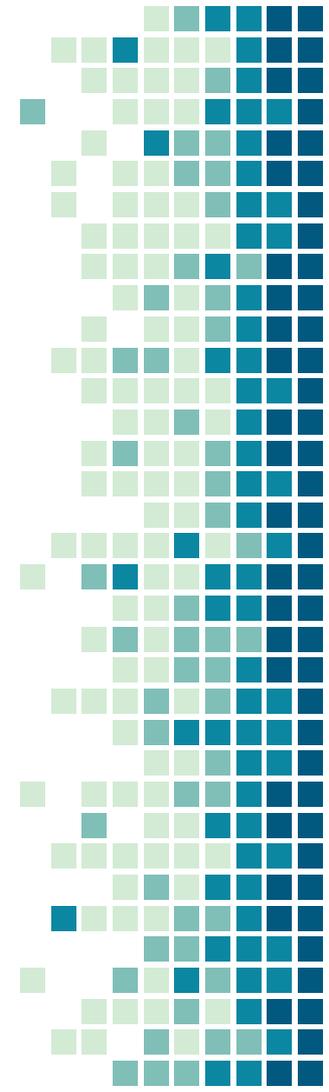
Title 51 O.S. §§ 24A.1-24A.31



# The Purpose of the ORA

- Oklahoma citizens have an “inherent right to know and be fully informed about their government . . . so they may efficiently and intelligently exercise their inherent political power.”

51 O.S. § 24A.2



1.  
What is a  
public record?



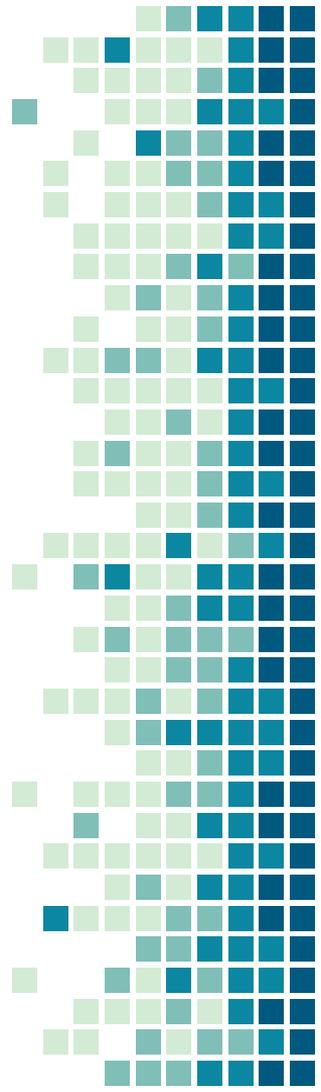


# What is a record?

All documents, including:

Books, papers, photographs, microfilm, certain data files, computer tape, disks, records, sound or film recordings, video recordings, emails, and text messages (2009 OK AG 12).

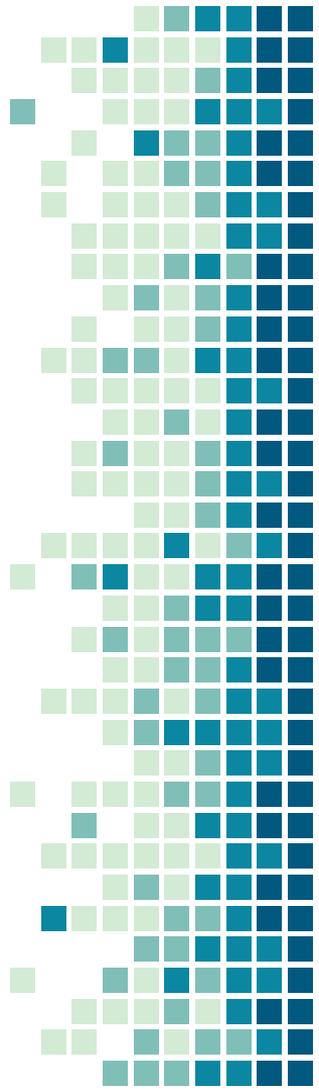
51 O.S. § 24A.3(1)





# What is *NOT* a record?

- Computer software
- Personal effects
- Personal financial information
- Toll collection audio/video
- Personal information given as a guest at a state park
- Certain Department of Defense forms
- Requests for information



# What makes a record public?

## Where?

Created by,  
received by,  
under the authority of, or  
coming into the custody,  
control or possession of

## Who?

A public official, public  
body, or their  
representatives

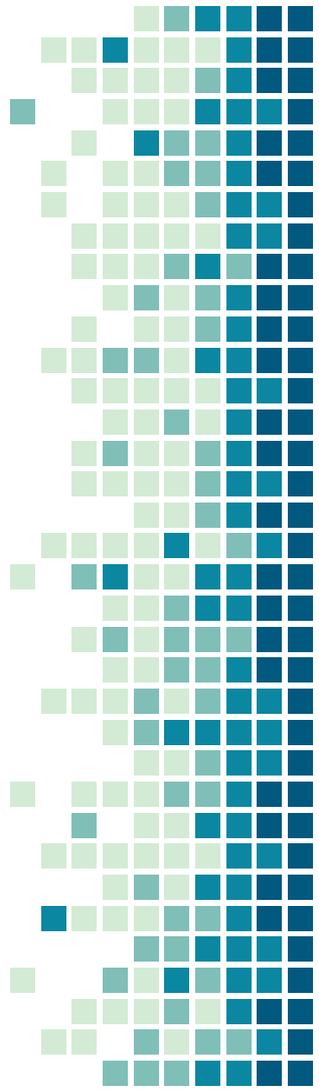
## What?

In connection with:

- The transaction of public business,
- The expenditure of public funds, OR
- The administering of public property

\*Note: Nothing in the ORA imposes any new recordkeeping requirements or any additional timeline for maintaining records.

51 O.S. § 24A.3(1)



2.

Who is a public body  
or a public official?



# Public Bodies and Public Officials



## Public Officials

An official or employee of any public body

1

## Public Bodies

Includes any office, board, commission, agency . . .  
Supported in whole/part by public funds, or  
expending or administering public funds, or operating  
public property

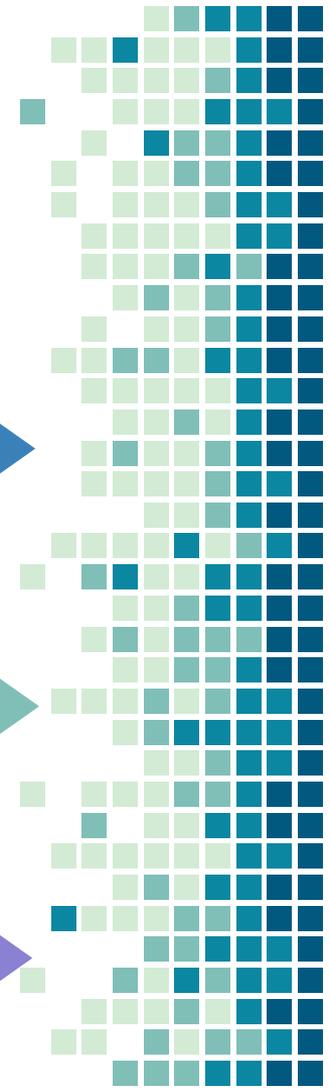
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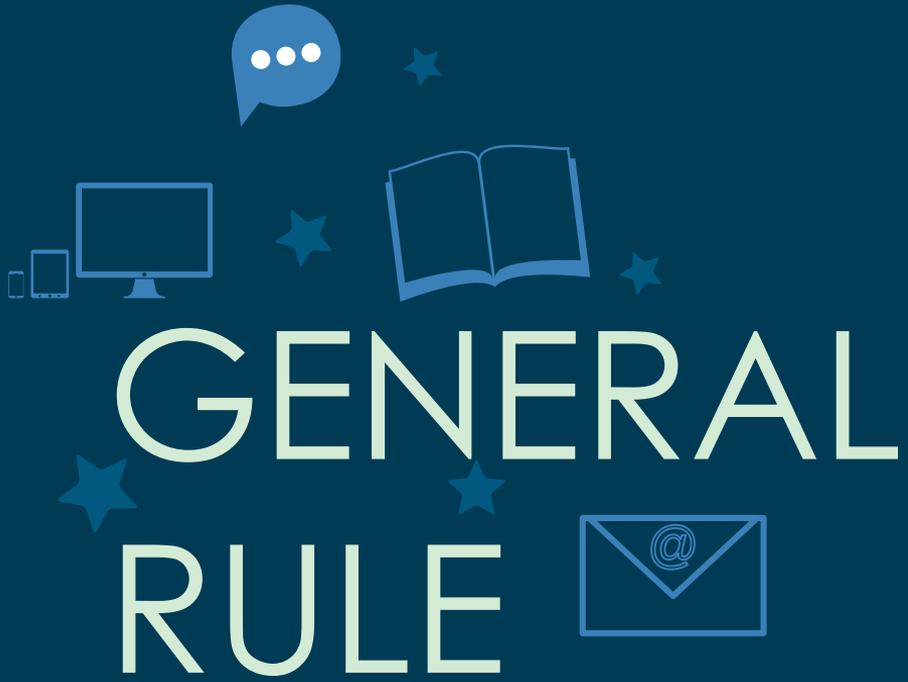
## Their Representatives

\*some exceptions

3

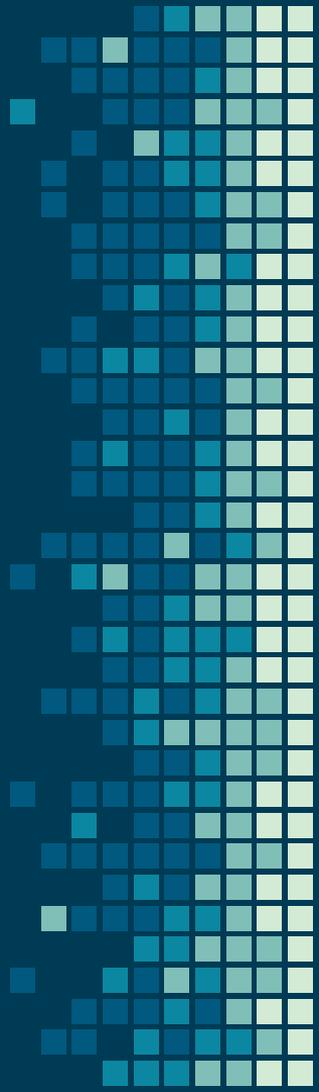
51 O.S. § 24A.3(1)





When a record meets these broad definitions, it is an OPEN RECORD.

*However*, exemptions or exceptions may shield a public record from disclosure.



3.

What *exemptions* or *exceptions* apply to shield a record from disclosure?



# Exempted Records: Required by Law to Remain Confidential

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51 O.S. § 24A.5



## State Evidentiary Privilege

Attorney-client privilege,  
attorney work product  
immunity, identity of informer



## Executive Sessions

Records of a lawfully  
closed portion of a public  
meeting



## Other State or Federal Statutes

i.e. FERPA,  
Juvenile Records



## Testing Materials for State Licensing Exams

Including test forms, question  
banks, answer keys



## Drivers' Personal Information

When collected by state  
motor vehicle agencies



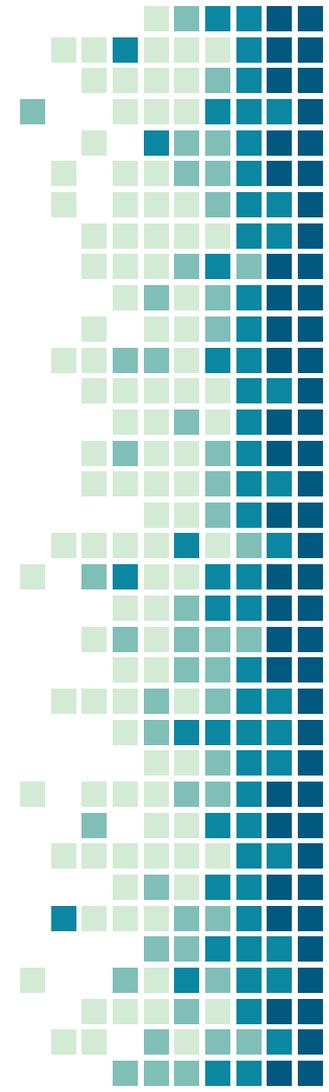
## Social Security Numbers

May be redacted or deleted  
prior to record's release

# Redaction

- Sometimes the entire record will be exempt.
- However, if redaction is possible, must provide any reasonably segregable portion of a record after deleting exempt portions.

51 O.S. § 24A.5(3)



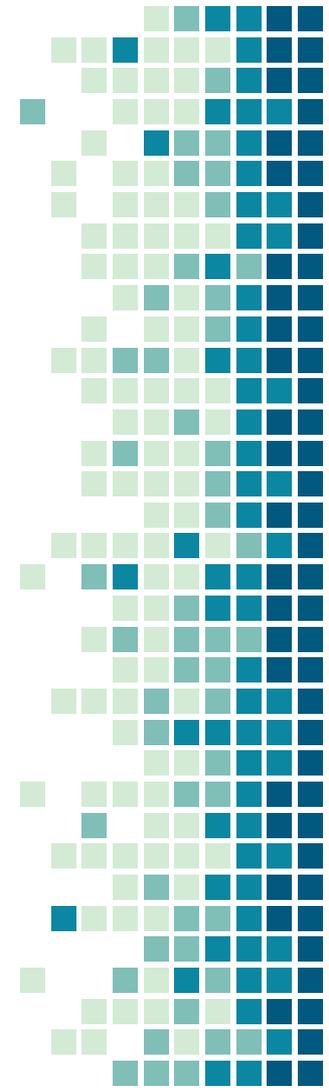
# Common Exemption: Attorney-Client Privilege

- The **Attorney-Client Privilege** generally protects communications made in confidence between privileged persons for the purpose of seeking, obtaining, or providing legal assistance for the client.

12 O.S. § 2502(A)(5)

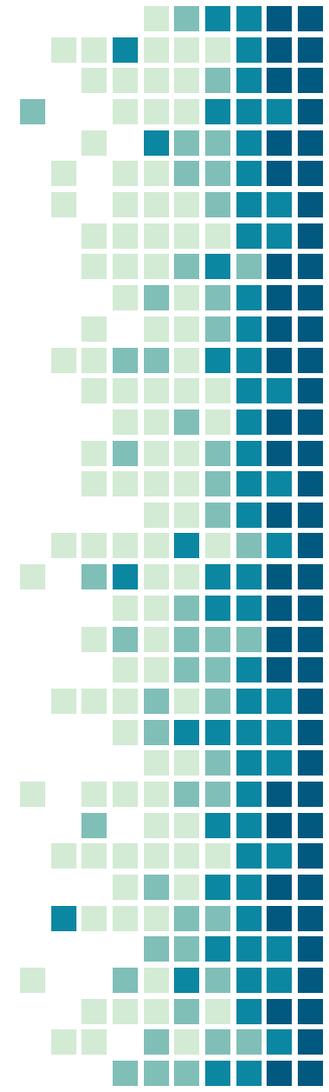
- **Note:** limited privilege for government clients
  - Protects communication re: pending investigation, claim, or action, when disclosure will seriously impair

12 O.S. § 2502(D)(7)



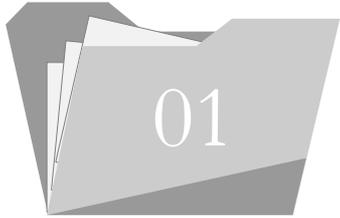
# Common Exemption: Work Product Immunity

- **Attorney Work Product Immunity** protects certain materials prepared in anticipation of litigation from being disclosed.
  - Generally, protects the strategy of the case: mental impressions, conclusions, opinions or legal theories. See *Scott v. Peterson*, 2005 OK 84, ¶ 8, 126 P.3d 1232, 1235.



# Exceptions: These Records Excluded from Disclosure

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**CERTAIN PERSONNEL  
RECORDS**



**FEDERAL RECORDS**



**PERSONAL NOTES**



**CERTAIN LAW  
ENFORCEMENT  
RECORDS**



**LITIGATION FILES &  
INVESTIGATORY  
REPORTS**

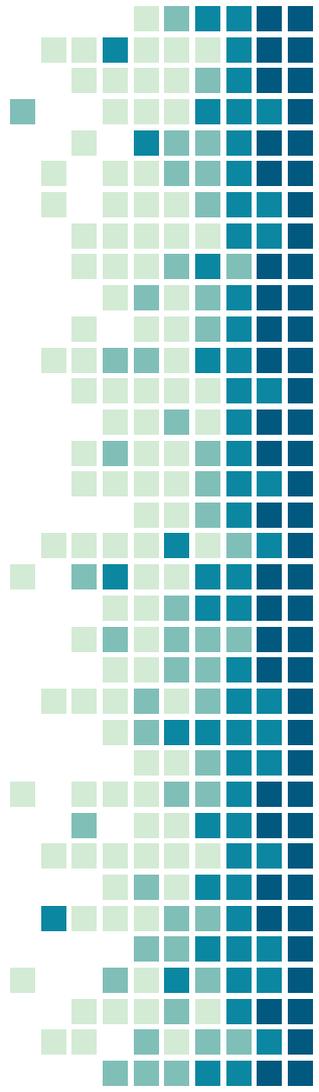


**COURT-SEALED  
RECORDS**

# Personnel Records

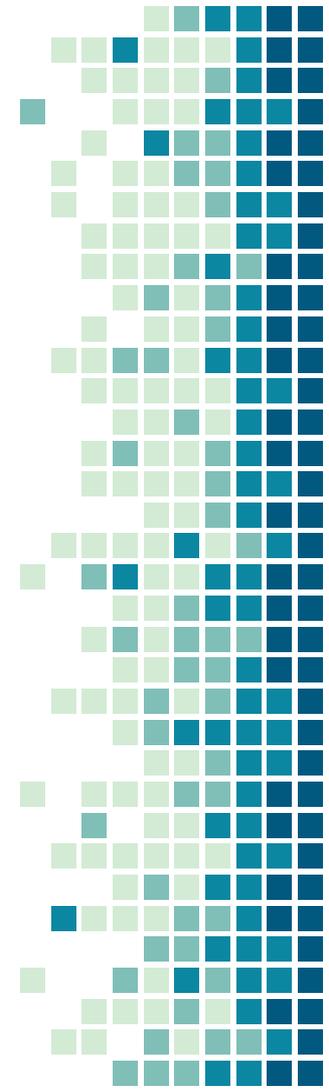
- Public bodies may keep personnel records confidential in two situations:
  1. Internal Personnel Investigations
  2. When disclosure would warrant an invasion of personal privacy.

51 O.S. § 24A.7(A)(2)



# Personnel Records

- Public bodies should utilize a balancing test weighing the public's right to know against the employee's right to privacy.
  - Protected from disclosure: place of birth, birthdate, date of marriage, employee ID number. *Oklahoma Pub. Employees Ass'n v. State ex rel. Oklahoma Office of Pers. Mgmt.*, 2011 OK 68, ¶ 39, 267 P.3d 838, 852.
  - However, shall disclose dates of employment, title, position, *final* disciplinary action. 51 O.S. § 24A.7(B).

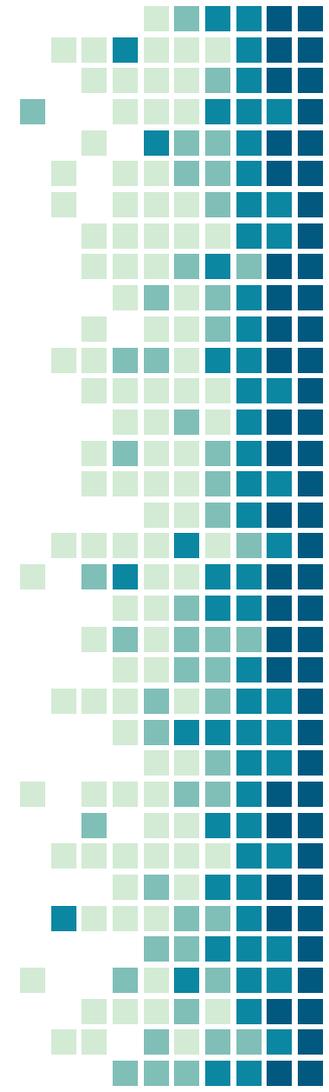


# Personal Notes

- A public official may keep confidential his or her personal notes and personally created materials *prior to taking action*:
  - Prior to making a recommendation, or
  - Prior to issuing a report

51 O.S. § 24A.9

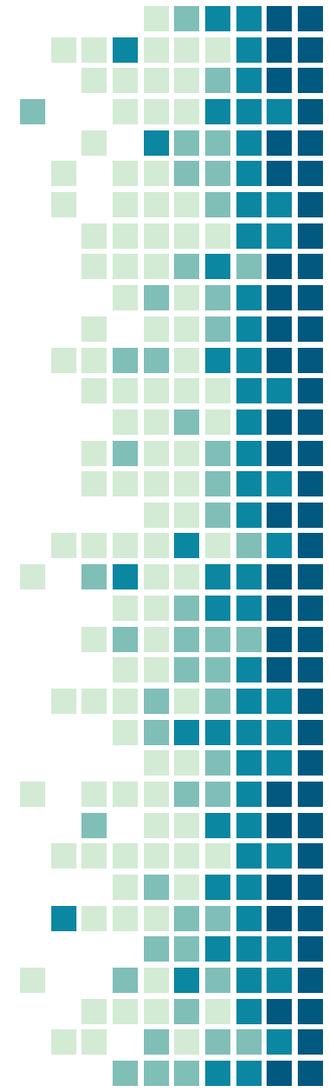
- **Note:** Consider records disposition schedule: duty to maintain records for a set period of time.



# Litigation Files & Investigatory Reports

- “Except as otherwise provided by state or local law, the **Attorney General** of the State of Oklahoma and **agency attorneys authorized by law**, the office of the **district attorney** of any county of the state, and the office of the **municipal attorney** of any municipality may keep its litigation files and investigatory reports confidential.”

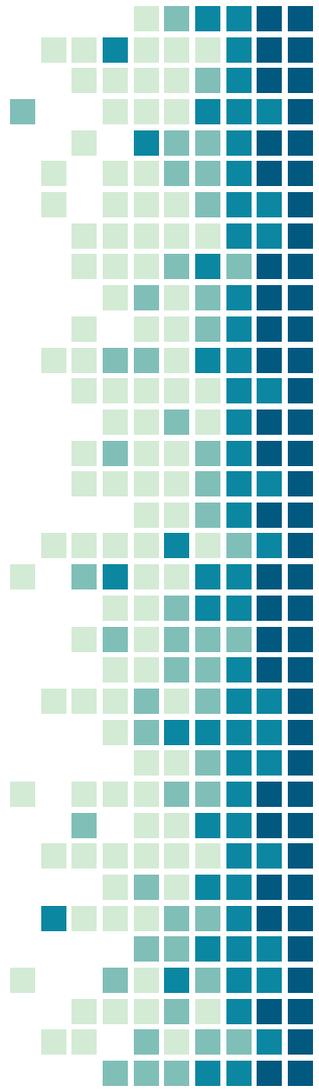
51 O.S. § 24A.12



# Litigation Files & Investigatory Reports

But see 51 O.S. § 24A.20:

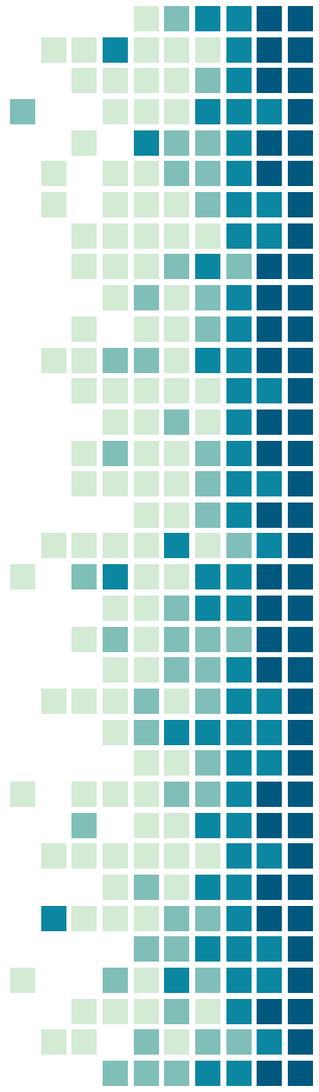
“Access to records which, under the Oklahoma Open Records Act, would otherwise be available for public inspection and copying, shall not be denied because a public body or public official is using or has taken possession of such records for investigatory purposes or has placed the records in a litigation or investigation file. However, a law enforcement agency may deny access to a copy of such a record in an investigative file if the record or a true and complete copy thereof is available for public inspection and copying at another public body.”



# Federal Records

Records coming into the possession of a public body from the federal government or as a result of federal legislation may be kept confidential to the extent required by federal law.

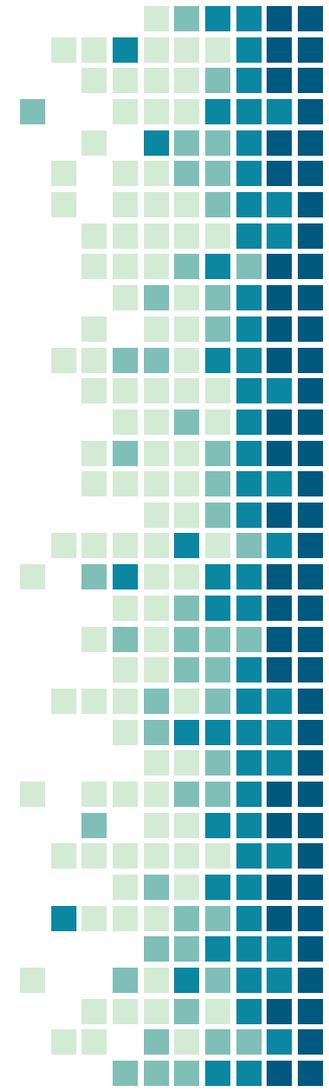
51 O.S. § 24A.13



# Law Enforcement Records

- The Act identifies 9 categories of law enforcement records that **MUST** be made available for inspection if kept.
- Except for these 9 categories, law enforcement agencies may deny access to records except where a court finds public interest/interest of an individual outweighs the reason for denial

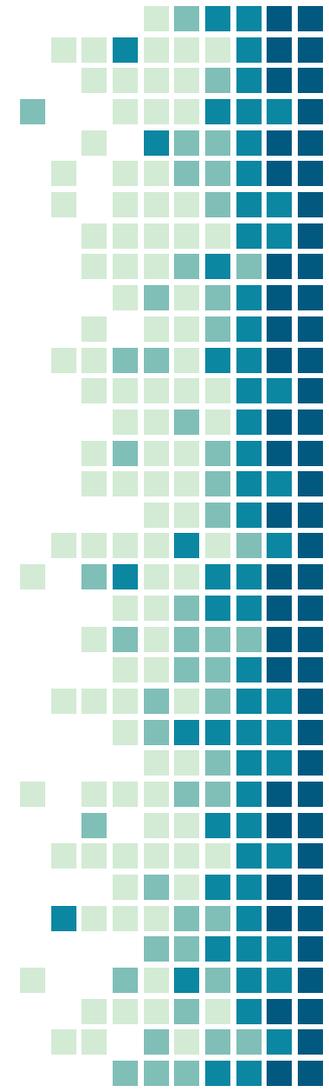
51 O.S. § 24A.8(B)



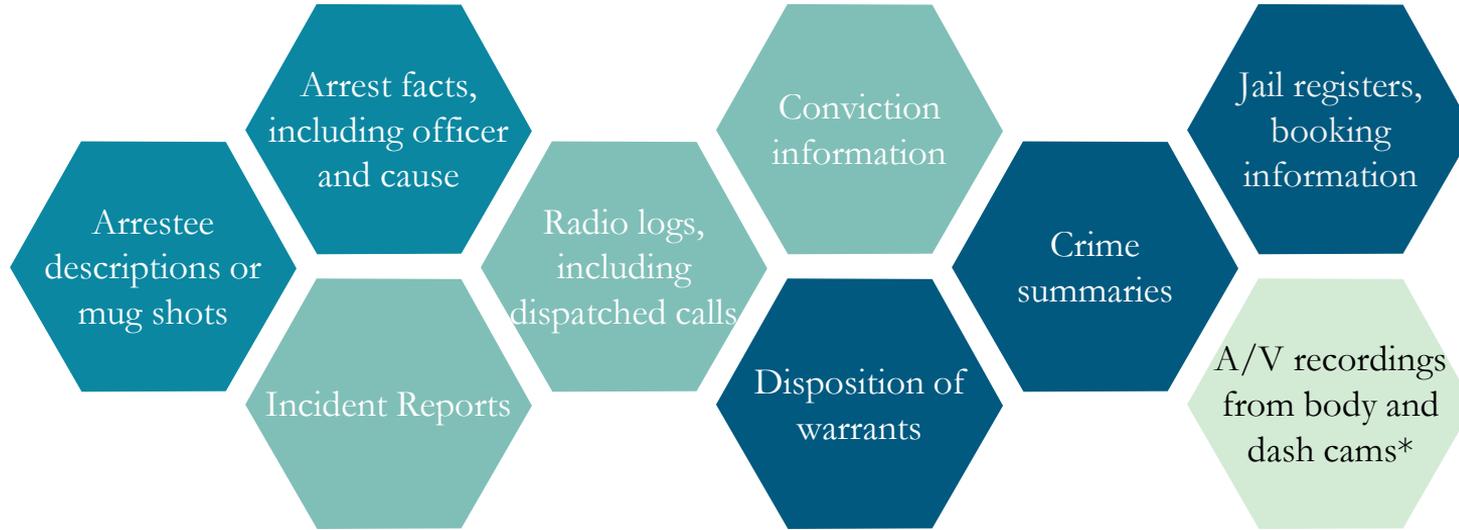
# Law Enforcement Records

- No Duty to Re-Create Records:
  - Law enforcement records shall be kept for as long as specified by law.
  - If no specific time requirement by law, maintain for as long as needed for administrative purposes.

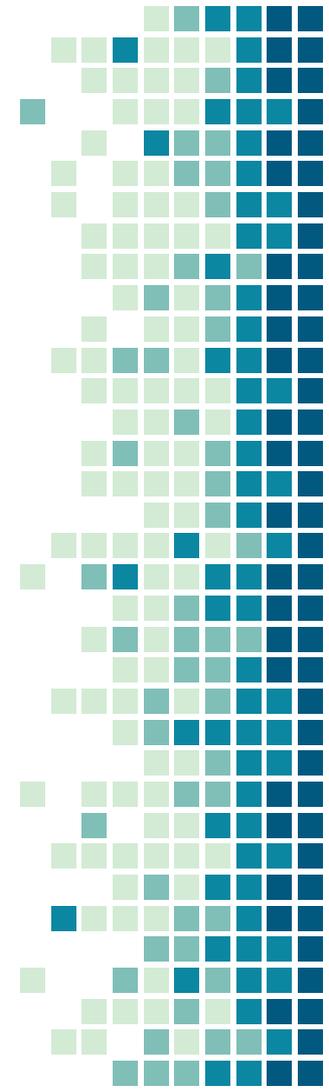
51 O.S. § 24A.8(C)



# Nine Categories of Open Law Enforcement Records

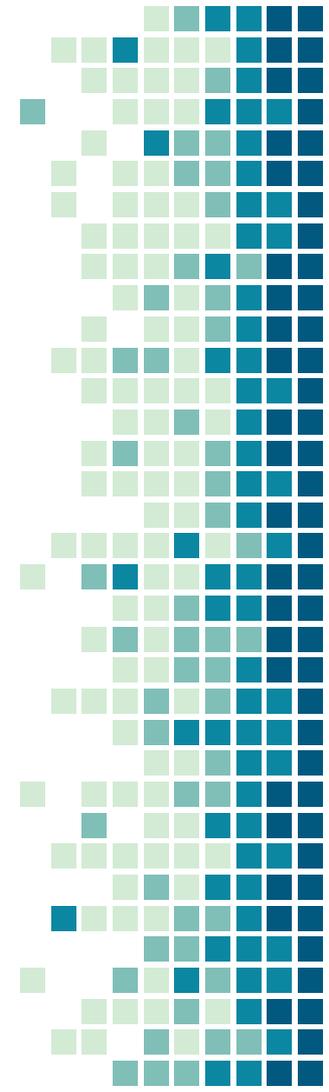


\*A/V recordings may be redacted or obscured before release as provided by the Act



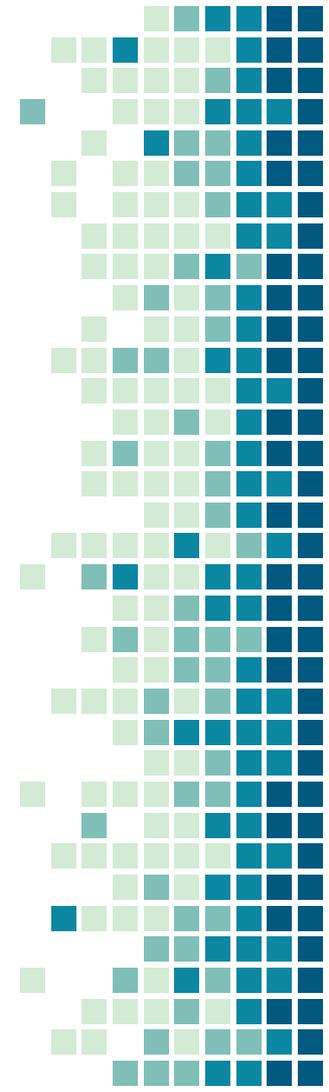
# Law Enforcement Related Records

- Certain information relating to **terrorism** may be kept confidential. 51 O.S. § 24A.28.
- **Traffic Collision Reports** may be withheld for up to 60 days, but the reports shall be made available as soon as practicable upon request to certain individuals (parties involved in the collision and their legal counsel, law enforcement agency, newspaper, radio, television broadcaster, etc.). 47 O.S. § 40-102; *Cummings*, 1993 OK 36, 849 P.2d 1087.
- CLEET and the Department of Public Safety shall keep certain **law enforcement training records** confidential. 51 O.S. § 24A.8.



# Court Records

- A **Protective Order** withholding material from the public must include: (1) statement from the court, (2) specific identification of material to be withheld, and (3) a Confidential stamp or label. 51 O.S. § 24A.29.
- **Court records** are open, unless sealed by a court.
  - To seal, the court must find a “compelling privacy interest exists which outweighs the public’s interest in the record.”
  - The order sealing the record must be public and must make specific findings of fact and conclusions of law. 51 O.S. § 24A.30.
- **Pleadings** in a criminal case may be kept confidential, until filed with the court clerk (unless sealed or otherwise protected). See, e.g., 22 O.S. § 385.

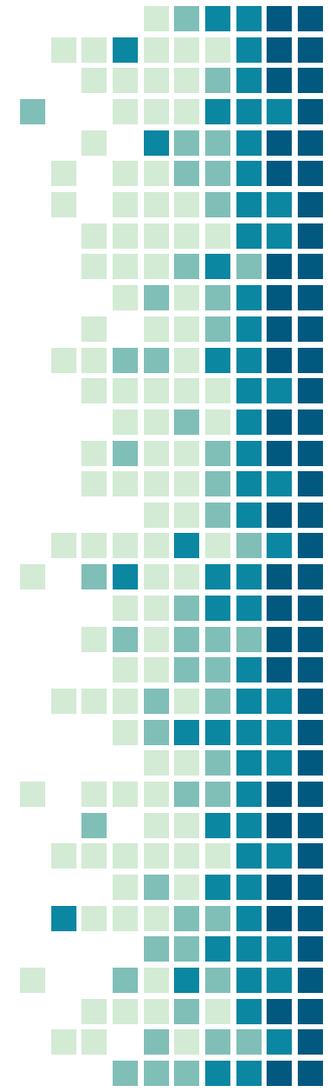


# Voluntarily Supplied Information

- Information or records voluntarily supplied to any state agency, board, or commission shall be subject to full disclosure.

51 O.S. § 24A.10

\*Exception if disclosure would give an unfair advantage to competitors or bidders in certain situations delineated in Section 24A.10(B).



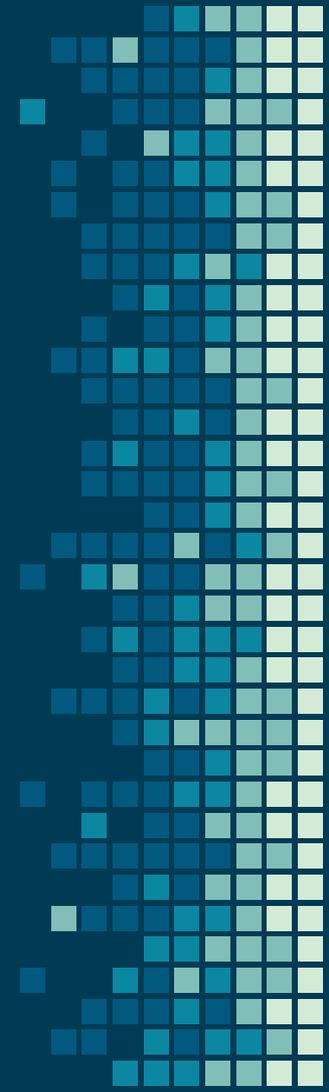
# The Open Records Act

2 Applies to a Public Body or Public Official

4 How to Produce?

1 What Is a Record?

3 Specific Exemptions or Exceptions Apply



4.  
How to produce  
open records?



# How to Disclose Public Records?



Open to any person



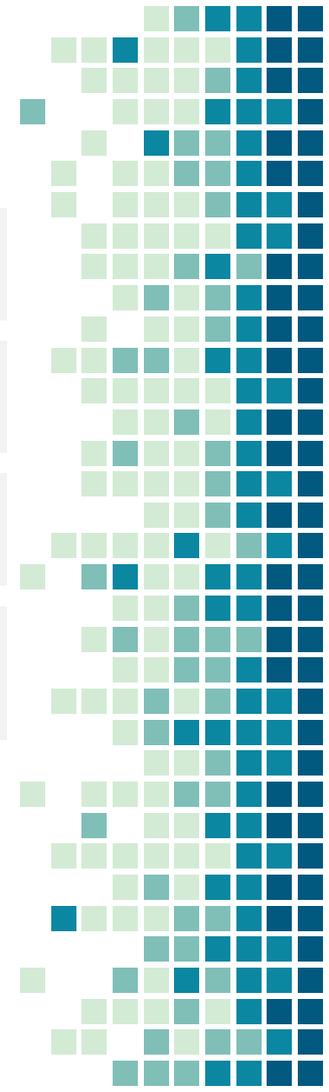
For inspection, copying, or mechanical reproduction



During regular business hours



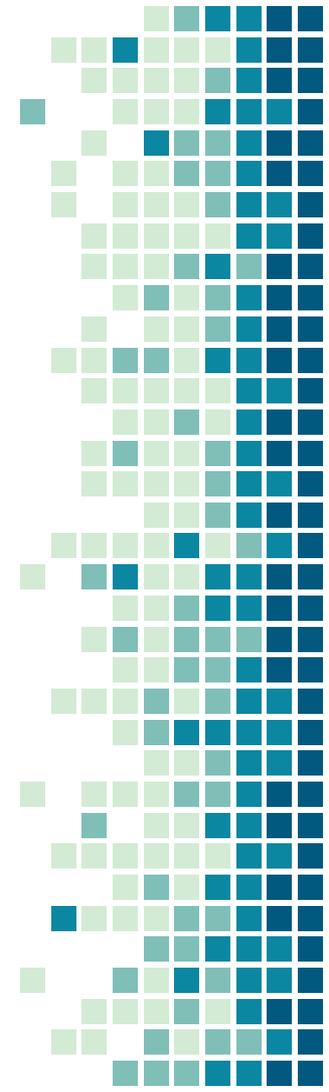
Not required to create a record or produce in a format that does not exist



# Procedures for Disclosure

- **Reasonable procedures** may be implemented to protect the integrity and organization of records and to prevent excessive disruption of essential functions. Section 24A.5(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 regular business hours of the public body.\* Section 24A.5(7).

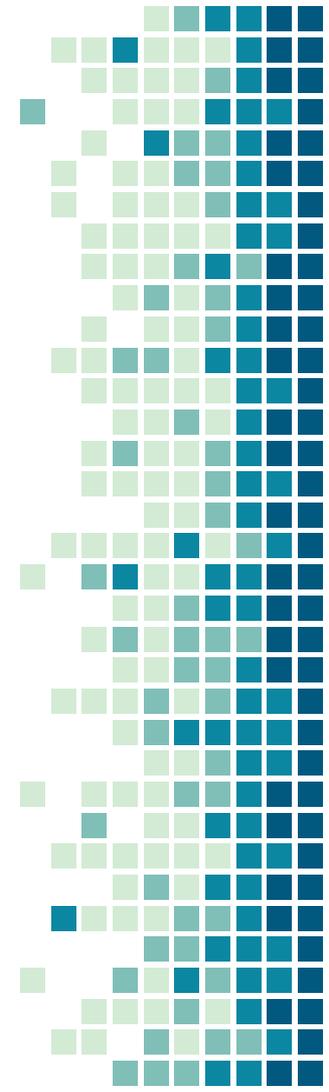
\*Special considerations given to public bodies maintaining less than 30 hours of regular business per week. Section 24A.6.



# Charging Fees

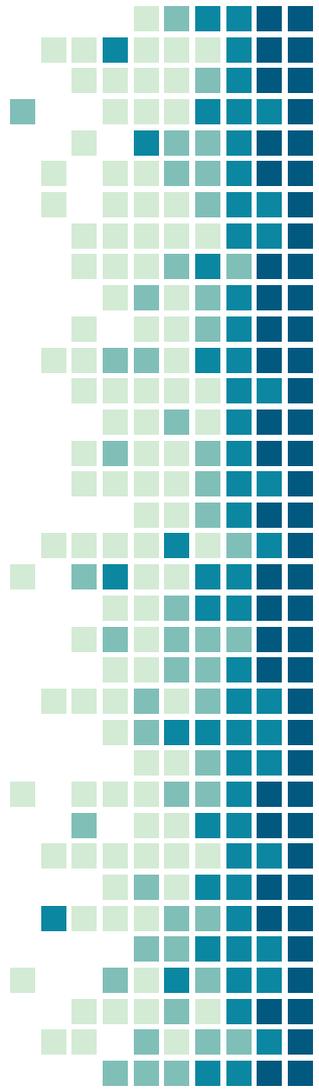
- The reasonable fee for direct cost of searching and copying records may be charged if:
  - The request is for solely commercial purposes; or
  - It would clearly cause excessive disruption of the essential functions of the public body.
- Recovery of the reasonable, direct costs of record copying or mechanical reproduction is also permitted
  - Not in excess of 25¢ per page for 8 ½ x 14” or smaller
  - Not in excess of \$1 for a certified copy
- Cannot charge a ***search fee*** when the release of records is in the public interest or to the news media.

51 O.S. § 24A.5(4)



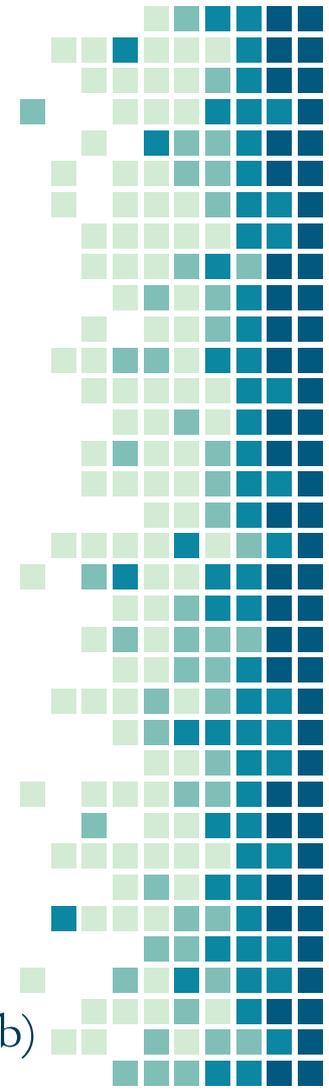
# Charging Fees: Media Exception

- Publication by media for news purposes shall not constitute commercial purpose; and
- The charge for providing copies of electronic data to the media for a news purpose *shall not exceed the direct cost of copying.*



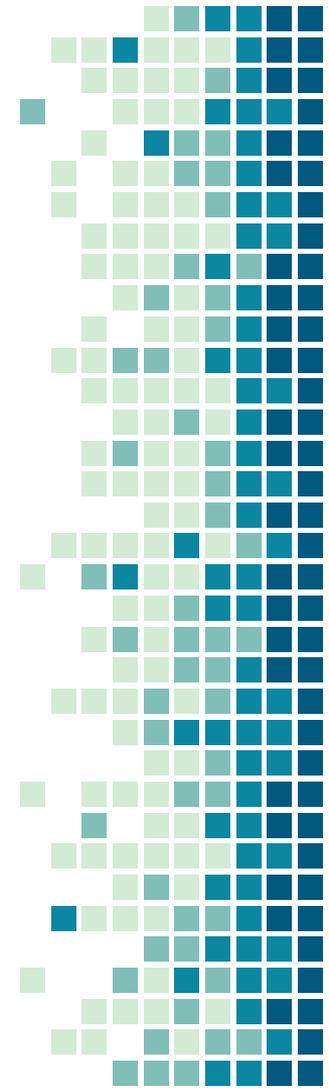
# Charging Fees: Notice of Fees

- Written fee schedule must be posted at principal office and with the county clerk.



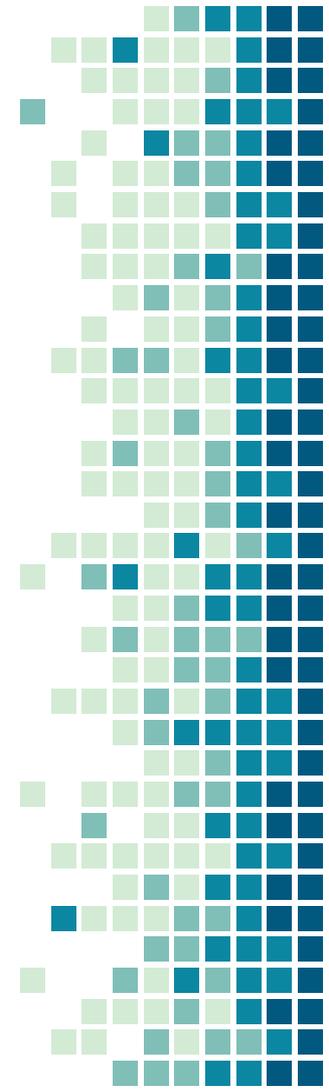
# Timeline for Responses

- Must provide prompt, reasonable access to records
- Cannot use a FIFO method to respond to requests



# Penalties for Violations of the ORA

- Public official + willful violation= misdemeanor
  - Fine of up to \$500,
  - Imprisonment in the county jail for up to 1 year,
  - or both fine and imprisonment
- Any person denied access may file:
  - a civil suit for declarative or injunctive relief, or both
  - BUT, suit is limited to records requested and denied prior to filing,
  - plus, if successful, reasonable attorney fees
- A public body/official is entitled to reasonable attorney fees if the suit is successfully defended and found clearly frivolous.



# THANK YOU

[www.oag.ok.gov](http://www.oag.ok.gov)

