Law Enforcement Records: The same mandate for openness that exists for nearly every other government record does not exist for law enforcement records, Oklahoma Attorney General Drew Edmondson noted in 1999.\(^1\) In essence, Edmondson explained, “Law enforcement records are not public records except as specified in the Open Records Act.”\(^2\) In other words, only certain records kept by the law enforcement agency must be made available for public inspection and copying. Those records are:

- “An arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee;
- Facts concerning the arrest, including the cause of arrest and the name of the arresting officer;
- A chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer and a brief summary of what occurred;
- Radio logs, including a chronological listing of the calls dispatched;
- Conviction information, including the name of any person convicted of a criminal offense;
- Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person;
- A crime summary, including an agency summary of crimes reported and public calls for service by classification or nature and number;
- Jail registers, including jail blotter data or jail booking information recorded on persons at the time of incarceration showing the name of each prisoner with the date and cause of commitment, the authority committing the prisoner, whether committed for a criminal offense, a description of the prisoner, and the date or manner of discharge or escape of the prisoner.”\(^3\)

In a video for training police about the Open Records Act, Edmondson emphasized that access to the listed information does not depend on the record title used by the law enforcement agency. “The department doesn’t have to call it a jail register. If it is a jail register, then it’s a public record,” Edmondson said. “They don’t have to call it a radio log. If they keep a log of radio traffic, then it’s a public record.”\(^4\)

Access to other records kept by the law enforcement agency may be denied, “except where a court finds that the public interest or the interest of an individual outweighs the reason for denial.”\(^5\) “Although this [statutory language] implies that a law enforcement agency must be able to specify a reason for denying access to a record not specified [in the Act], it clearly swings the initial burden of disclosure to the party seeking disclosure,” Edmondson has said.\(^6\)

His 1999 opinion concluded: “[P]leadings in a criminal case, such as motions, the information or the indictment, may be kept confidential by a district attorney’s office. Such pleadings, when filed with the court clerk, must be made available for public inspection or copying unless they have been sealed by a court or are protected by a specific privilege of confidentiality.”\(^7\)

In 2002, legislators delayed most public access to traffic collision reports for sixty days after the report is filed by the law enforcement agency with the state Department of Public Safety.\(^8\) The legislation apparently was intended to stop Tulsa publications that were quickly gathering collision report information and selling it to a subscriber list of lawyers and doctors. State law already prohibited using information on the reports to solicit a “professional, business, or commercial relationship.”\(^9\)

Under the new statute, only the news media, insurance companies and people directly involved in the collision can access the report for the first sixty days.\(^10\) Newspapers are statutorily defined in part as having

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1. 1999 OK AG 58, ¶ 13 (“[T]here is not the same mandate of openness for law enforcement records which exists for nearly every other record of a public body.”).
2. Id. ¶ 12.
5. § 24A.8(C).
7. Id. ¶ 10.
9. § 40.102(B)(1)(2).
10. § 40.102(A)(2).
maintained a “paid general subscription circulation in the county” for 104 consecutive weeks. Violation of the statute is considered a misdemeanor punishable on the first offense with a fine of up to $2,500. Subsequent violations carry a penalty of up to thirty days in the county jail.

In May 2005, legislators specifically exempted Department of Public Safety records relating to “training, lesson plans, teaching materials, tests, and test results;” tactical policies, procedures and operations; and from radio logs, any telephone numbers, personal information protected by the federal Driver’s Privacy Protection Act and “addresses other than the locations of incidents to which officers are dispatched.” The exemptions were a compromise between DPS and the Oklahoma Press Association. DPS originally sought to keep secret a number of records the Tulsa World had won access to during a three-year court battle with the agency. In February 2005, an Oklahoma County district judge had ordered DPS to release “a list of documents and computerized data including records concerning the use of force by state troopers, a database of police dog searches, a list of lawsuits and other legal actions involving the agency.” As originally drafted, the subsequent legislation would have limited public access to only single-incident reports and not sets of computer data that could be used to determine demographic or other law enforcement trends.

Public access to DPS’s audio and video recordings also was curtailed by legislators in May 2005. In March, an Oklahoma County district judge had “barred the Oklahoma Highway Patrol from keeping videotapes of traffic arrests secret.” An attorney specializing in drunken-driving cases sued DPS after it refused to release the videotape of such an arrest without the driver’s written consent first. “We continue to find that many officers make up evidence and exaggerate their testimony about the events. These tapes are extremely important to a citizen who is wrongly accused,” said attorney Stephen G. Fabian Jr. The attorney had used the Open Records Act to gather hundreds of such videotapes from police departments and OHP. Subsequent legislative changes to the Act exempted DPS’s audio and video recordings, but Fabian said he would still be seeking – and likely receiving – the tapes in criminal proceedings via subpoenas.

\[\text{\textsuperscript{11}}\] § 40.102(A)(2)(j) (citing OKLA. STAT. tit. 25, § 106 (OSCN 2004)).
\[\text{\textsuperscript{12}}\] 2005 O.S.L. 199, § 6 (codified as OKLA. STAT. tit. 51, § 24A.8(G)) (effective Nov. 1, 2005).
\[\text{\textsuperscript{14}}\] Price, supra note 105. See also Associated Press, Henry signs bill to limit access to records, THE EDMOND SUN, May 22, 2005, at A15.
\[\text{\textsuperscript{17}}\] Id.
\[\text{\textsuperscript{18}}\] Id. See also Telephone Interview with Stephen G. Fabian Jr., Senior Partner, Fabian & Associates Inc., P.C. (June 16, 2005).
\[\text{\textsuperscript{20}}\] Telephone Interview, supra note 109.