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## Question Submitted by: The Honorable Ray Giles, Oklahoma State Senate, Ted Limke, Director, Oklahoma State Bureau of Investigation

1986 OK AG 69

Decided: 06/20/1986

Opinion No. 86-39, 86-69

Oklahoma Attorney General

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Cite as: 1986 OK AG 69, \_\_ \_\_

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¶0 The Attorney General has received your requests for an official opinion asking, in effect:

1. Is an employee of the Oklahoma Bureau of Investigation (OSBI) entitled to review as a part of his or her personnel file, any materials gathered in the background investigation of such employee?
2. If the answer to question 1 is in the affirmative, may the OSBI refuse to provide that part of the personnel file which was obtained from "confidential informers"?

I

¶1 Your questions relate to the application of Oklahoma's recently amended Open Records Act, codified at 51 O.S. 24A.1 et seq. (1985). 51 O.S. 24A.7 provides:

"A. A public body may keep personnel records confidential:

"1. Which relate to internal personnel investigations including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline, or resignation; or

"2. Where disclosure would constitute a clearly unwarranted invasion of personal privacy such as employee evaluations, payroll deductions, or employment applications submitted by persons not hired by the public body.

"B. All personnel records not specifically falling within the exceptions provided in subsection A of this section shall be available for public inspection and copying including, but not limited to, records of:

"1. An employment application of a person who becomes a public official;

"2. The gross receipts of public funds;

"3. The dates of employment, title or position; and

"4. Any final disciplinary action resulting in loss of pay, suspension, demotion of position, or termination.

"C. *Except as may otherwise be made confidential by statute, an employee of a public body shall have a right of access to his own personnel file.*" (Emphasis added).

¶2 It is well settled that in construing legislative enactments, the fundamental rule of construction is to ascertain and, if possible, give effect to the intention and purpose of the Legislature. *Jackson v. Ind. Sch. Dist. No. 16*, 648 P.2d 26 (Okla. 1982). It is clear in the foregoing provisions of 24A.7, that the Legislature intended to create two separate classes of persons whose right of access to personnel files depends upon the class to which such persons belong. While members of the general public may not have access to all personnel records but are subjected to the restrictions of subsections A and B, the Legislature has conferred greater rights to an employee of a public body, whose access to his own personnel file is unrestricted by subsection A, but governed instead by subsection C.

¶3 Moreover, if we were to construe the confidentiality provisions of subsection A as providing an exception to the right in subsection C of access by an employee of a public body to his or her own file, subsection C would be rendered a nullity, since all other personnel records not enumerated by subsection A are available to an employee as a member of the public under subsection B. Clearly, then, subsection C operates as an exception to the authority of a public body to keep some personnel records confidential by providing the employee access to his or her own records, unless, elsewhere in the law, an exception may be found. Similarly, under this analysis, personnel investigations such as background investigations are necessarily deemed a part of the personnel file.

¶4 Within the statutes creating and describing the authority of the OSBI is the following language at 74 O.S. 150.5(D) (1985):

"All records relating to any investigation being conducted by the Bureau shall be confidential and shall not be open to the public or to the Commission except as provided in 74 O.S. 150.4 of this title. Any unauthorized disclosure of any information contained in the confidential files of the Bureau shall be a misdemeanor. The person or entity authorized to initiate investigations in this section shall receive a report of the results of the requested investigation. The person or entity requesting the investigation may give that information only to the appropriate prosecutorial officer or agency having statutory authority in the matter if that action appears proper from the information contained in the report, and shall not reveal or give such information to any other person or agency. Violation hereof shall be deemed willful neglect of duty and shall be grounds for removal from office."

¶5 We must therefore determine whether an OSBI "investigation" includes background investigations conducted by the OSBI regarding its own employee, so as to preclude that employee's right to examine that portion of his or her personnel file under the Open Records Act.

¶6 The statutes governing the OSBI authorize that agency to conduct criminal investigations when requested to do so by various law enforcement agencies as well as the Governor, the Attorney General and various other specifically enumerated public officials. See, for example, 74 O.S. 150.2, 74 O.S. 150.5 (1985).

¶7 In addition, the agency has investigative authority relating to organized vehicle or heavy equipment theft rings, 74 O.S. 150.7a (1985), and oil and gas theft. 74 O.S. 150.22 and 74 O.S. 152.2 et seq. (1985). Each of the statutes relating to the powers and duties of the OSBI contains explicit language which describes or limits the circumstances under which the agency may exercise its authority to conduct investigations. None of the statutes refers to the type of general background investigation to which your question refers, conducted relative to determination of the employee's employment qualifications.

¶8 It is a sound rule of statutory construction that statutes must be interpreted in light of their context. *Davis v. State*, 300 P.2d 1000, 1010 (Okla. Cr. 1956). The intention and purpose of the Legislature should not be ascertained from any single, isolated clause or sentence, or from particular or partial recitals, but from a general consideration or viewpoint of the act as a whole. *Nelson v. State*, 288 P.2d 429, 438 (Okla. Cr. 1955). Thus, where the same word or phrase is used in different parts of a

statute, it will be presumed to be used in the same sense throughout, and where its meaning in one instance is clear, this meaning will be attached to it elsewhere, unless a contrary intention of the Legislature to use it in a different sense is clear. *Walton v. Donnelly*, 201 P.367 (Okl. 1921); e.g., *State v. Tapp*, 380 P.2d 260 (Okl. 1963).

¶9 It thus seems clear that the investigations which are required to be kept confidential pursuant to 74 O.S. 150.5(D) are those referred to throughout the statutes governing the OSBI which are performed in its official capacity as an arm of the law enforcement of this State. While we do not question the inherent authority of the agency to take proper steps to ascertain and assure itself of the qualities of "honesty, integrity and ability" its employees are required by statute to maintain, 74 O.S. 150.8 (1985), we do not find that personnel background investigations, initiated and conducted by the OSBI independent of its specifically authorized powers and duties, are the types of investigations referenced by 74 O.S. 150.5(D) to be protected by confidentiality.

¶10 Moreover, we believe that any doubt that such a finding is proper is resolved by the policy and purpose of both Oklahoma's Open Records Act, and other statutory enactments, as well as caselaw in this area. See, the purposes of the Open Records Act, at 51 O.S. 24A.2 (1985); 74 O.S. 841.9 (1985), providing a grievance procedure for state employees; *Tulsa Tribune Co. v. Okla. Horse Racing Com'n*, 57 O.B.A.J. 1323 (May 28, 1986), *rehearing pending*.

## II

¶11 Your second question asks whether the OSBI, in providing an employee access to his own personnel file, may nevertheless refuse to disclose information provided by "confidential informers." We find in Oklahoma law only one statute which specifically addresses this concept. Title 12 O.S. 2510 (1981) provides, with some exceptions, that the State has a privilege to refuse to disclose the identity of a person who has furnished information relating to an investigation of a possible violation of a law. This statute clearly does not confer any right of confidentiality of the information obtained, but only of the identity of such informer. In addition, the privilege is only provided with respect to investigations of a possible violation of the law, thus, to the extent information is received from an informer relative only to a general background investigation, 12 O.S. 2510 has no application. (*But, see, 51 O.S. 24A.14 (1985) regarding complaints from persons exercising constitutional rights).*

¶12 In an opinion rendered only very recently, however, the Oklahoma Supreme Court has addressed the issue of whether an individual who has furnished information to a public agency has standing to challenge the right of access to such information by persons requesting to obtain it.

¶13 In *Tulsa Tribune Co. v. Okla. Racing Commission*, *supra*, the Court addressed the situation where an agency acting in good faith determines that the release of requested information might have an adverse effect on the person who originally furnished such information to the agency. Persons who may be adversely affected are entitled, the Court ruled, to written notice of the request for information, and a reasonable time in which to object to its dissemination. Should an objection be made, the agency must then determine whether to provide the information, and provide notice to the individual of its decision. The Court noted that in ruling on a request for information, the agency must consider that pursuant to the Open Records Act, disclosure of information is to be favored over finding an exemption.

¶14 Information obtained relative to an employee background investigation may, therefore, be withheld from the employee only to the extent that the individual who provided such information to the agency has objected to its release, and the agency has made a good faith finding that release of each particular piece of information to be withheld will be damaging to the individual who has objected to its dissemination.

¶15 It must be noted that this opinion relates only to the rights of persons who are, at the time of their request for inspection of their personnel files, employees of a public body. No opinion is provided with respect to applicants for employment who do not become state employees.

¶16 It is, therefore, the official opinion of the Attorney General that:

1. While pursuant to 51 O.S. 24A.7(A) (1985), records of the Oklahoma State Bureau of Investigation relating to the background investigation of an employee may not be disclosed to the general public, an employee of the agency is entitled, under 51 O.S. 24A.7(C) (1985), to access to his or her background investigation as a part of his or her own personnel file.

2. There is no specific statutory authority to refuse to divulge information obtained by "confidential informers" relating to a background investigation performed by the OSBI, nor may the OSBI refuse to divulge the name of the informer where no investigation of a violation of the law is being conducted, unless the individual who provided information to the OSBI has objected to its release, and the agency has made a good faith finding that release of each particular piece of information to be withheld will be damaging to the individual who has objected to its dissemination.

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SUSAN BRIMER LOVING  
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### **Citationizer<sup>®</sup> Summary of Documents Citing This Document**

#### **Cite Name Level**

None Found.

### **Citationizer: Table of Authority**

<b>Cite Name</b>	<b>Level</b>
<b>Title 12. Civil Procedure</b>	
Cite	Name
<u>12 O.S. 2510,</u>	<u>Identity of Informant</u>
	Discussed
<b>Title 51. Officers</b>	
Cite	Name
<u>51 O.S. 24A.1,</u>	<u>Short Title</u>
<u>51 O.S. 24A.2,</u>	<u>Political Power - Public Policy and Purpose of Act</u>
<u>51 O.S. 24A.7,</u>	<u>Confidential Personnel Records of Public Body</u>
<u>51 O.S. 24A.14,</u>	<u>Confidential Personal Communications Exercising Constitutional Rights</u>
	Discussed at Length
	Cited
<b>Title 74. State Government</b>	
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<u>74 O.S. 150.2,</u>	<u>Powers and Duties of the Oklahoma State Bureau of Investigation</u>	Cited
<u>74 O.S. 150.4,</u>	<u>Commission - Powers and Duties</u>	Cited
<u>74 O.S. 150.5,</u>	<u>Investigations - Who May Initiate Investigation by Request - Confidentiality of Records</u>	Discussed at Length
<u>74 O.S. 150.7a,</u>	<u>Motor Vehicle Theft Unit</u>	Cited
<u>74 O.S. 150.8,</u>	<u>Appointment of Employees - Powers of Peace Officers - Probationary Period - Classified Service - Rights Under Additional Pension Systems</u>	Cited
<u>74 O.S. 150.22,</u>	<u>Special Motor Carrier Enforcement Officers Transferred to Investigate Oil and Gas Theft - Salary, Leave and Benefits</u>	Cited
<u>74 O.S. 152.2,</u>	<u>Definitions</u>	Cited
<u>74 O.S. 841.9,</u>	<u>Renumbered as 74 O.S. § 840-6.2 by Laws 1994, HB 2331, c. 242, § 54</u>	Cited