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## LAWSON v. SEQUOYAH COUNTY 911 TRUST AUTHORITY

2022 OK CIV APP 39

Case Number: 120533

Decided: 07/29/2022

Mandate Issued: 11/09/2022

DIVISION III

THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION III



Cite as: 2022 OK CIV APP 39, \_\_ P.3d \_\_

JAMES LAWSON, D/B/A AAA LAWSON BAIL BONDS, LLC, Plaintiff/Appellant,

v.

SEQUOYAH COUNTY 911 TRUST AUTHORITY AND DAVID SLAUGHTER IN HIS OFFICIAL [SIC] AS DIRECTOR OF THE SEQUOYAH COUNTY 911 TRUST AUTHORITY, Defendants/Appellees.

APPEAL FROM THE DISTRICT COURT OF  
SEQUOYAH COUNTY, OKLAHOMA

HONORABLE KYLE E. WATERS, TRIAL JUDGE

**AFFIRMED IN PART AND REVERSED IN PART**

Jana L. Knott, BASS LAW, P.C., Oklahoma City, Oklahoma, for Plaintiffs/Appellants,

Fourth Scoufos, Jordan L. Pace, SCOUFOS LAW OFFICES, P.C., Sallisaw, Oklahoma, for Defendants/Appellees.

THOMAS E. PRINCE, PRESIDING JUDGE:

¶1 The controversy at issue in this case involves the policy of the Sequoyah County 911 Trust Authority to refer private individuals to the Court Clerk's Office or to the on-line source found at [www.odcr.com](http://www.odcr.com) when warrant information has been requested. Although summary judgment was granted to the Defendants<sup>1</sup> on all of the claims for relief asserted below, the Appellant, James Lawson, D/B/A AAA Lawson Bail Bonds, LLC ("Lawson"), has only appealed the trial court's entry of summary judgment in favor of the Defendants with respect to the declaratory judgment claim for relief and, specifically, whether the 911 Authority's policy at issue here violates 51 O.S. § 24A.8, of the Open Records Act. We hold that summary judgment was erroneously granted to the Defendants on the declaratory judgment claim concerning the policy of the 911 Authority and, that, conversely, Lawson is entitled to summary judgment on that claim. Subject to the holding in this Opinion, the trial court's Order of June 2, 2022, is affirmed in all other respects. Thus, the trial court's order of June 2, 2022, is affirmed, in part, and reversed, in part.

## BACKGROUND

¶2 Lawson, a bail bondsman operating in Sequoyah County, Oklahoma, filed this Open Records Act<sup>2</sup> lawsuit on September 30, 2021, stemming from a series of telephone calls he had made on May 23, 2020. In an effort to learn information regarding an outstanding warrant on a specific person, Lawson first called the Sequoyah County Sheriff's Office and then David Slaughter, Director of the Sequoyah County 911 Trust Authority. Both the Sheriff's Office and Slaughter advised Lawson to contact the Sequoyah County Court Clerk's office to obtain the information he was seeking. <sup>3</sup> Slaughter accepted the call while outside the office, as the call was forwarded to his cell phone while he was "driving down the road".

¶3 Lawson never asked to inspect or copy any records. He was seeking a verbal response over the phone regarding information that was publically available on the *www.odcr.com* website. Lawson agreed in his deposition that he never asked to come down to the 911 Authority's Office and see a copy of the warrant or make a copy of it. <sup>4</sup>

¶4 The 911 Authority is a public trust that has contracted with the Sequoyah County Sheriff's Office to provide emergency and non-emergency communications services for the Sheriff's Office. Slaughter is employed as the 911 Coordinator for Sequoyah County. While the 911 Authority has access to the information available in the Nation Crime Information Center ("NCIC") (which does not provide a view of the actual warrant), it receives copies of all warrants issued in Sequoyah County. The Court Clerk's Office sends over a copy of all Sequoyah County warrants to the 911 Authority. Slaughter testified in his deposition that "[w]e don't get the information as soon as it's edited over in the court clerk's office. We get that information when they walk the information over to us. So there could be -- there could be any type of time delay." <sup>5</sup> Slaughter testified that the Court Clerk's Office provides his office with copies of warrants, together with any updates, whether a warrant has been recalled, any changes in the bond amount, and any changes in a bond's conditions. <sup>6</sup>

¶5 Slaughter further testified, regarding the 911 Authority's policies, that, in the event a member of the general public called and asked for "some specific information . . .", he "would request they come to my office so they could review those records". <sup>7</sup> Regarding information concerning warrants, however, Slaughter testified that the 911 Authority "refer[s] everyone to the court clerk's office or ODCR [i.e., *www.odcr.com*] to get the latest information." <sup>8</sup> He also testified that his office specifically does not give that information out over the phone: "[w]e don't do that. We're not sure of the accuracy of the information . . ." <sup>9</sup> On the other hand, he testified that, if a member of law enforcement requested such information, they "would give him the information \* \* \* and ... do whatever ... [they] can to assist the law enforcement officer...". <sup>10</sup>

¶6 Although the Petition filed by Lawson appeared, on its face, to assert only one claim for relief, imbedded therein were two separate contentions: i.e., first, as asserted in ¶ 7 of the Petition, that the Defendants violated the Open Records Act in regard to the telephonic request for information on May 23, 2020; and, secondly, as asserted in ¶ 8 of the Petition, that the 911 Authority "established a policy for public inspection of documents in violation of the Open Records Act . . .".

¶7 The Defendants filed a Motion for Summary Judgment on March 8, 2022, which only addressed the assertion included in ¶ 7 of the Petition: i.e., that summary judgment was appropriate because Lawson "never requested to inspect or copy the document at issue, i.e., an arrest warrant." <sup>11</sup> The Plaintiff's Response filed March 31, 2022, did not contest any of the material facts set out in the Defendant's Motion for Summary Judgment. The Response

by Lawson argued that "[n]othing in the statute prohibits the agency from providing the requested information over the phone . . ." and also that the policy of the 911 Authority violates the Open Records Act because, when warrant information is requested by a private individual, the 911 Authority "refer[s] them to the Court Clerk's Office or to Oklahoma District Court Records (ODCR)." <sup>12</sup> A hearing was held on April 14, 2022. The trial court, thereafter, entered an Order Granting Defendant's Motion for Summary Judgment (on June 2, 2022), finding "that at no time did [Lawson] . . . request to inspect and/or copy any records kept or maintained by Defendant, and at no time did Defendant fail, refuse or otherwise neglect to make any such documents available for public inspection and copying in violation of the Oklahoma Open Records Act . . .". Despite the fact that no separate finding was made by the trial court on the validity of the policy of the 911 Authority that is at issue, the trial court granted the Defendants' Motion for Summary Judgment and entered a final judgment in favor of the Defendants on all issues, as demonstrated by the specific determination in the trial court's order of June 2, 2022, that "Plaintiff's Petition is . . . dismissed". This timely appeal followed.

### STANDARD OF REVIEW

¶8 Examination of a grant of summary judgment requires appellate courts to determine whether the record actually presented reveals disputed material facts. *Id.*; see also *Weeks v. Wedgewood Village, Inc.*, 1976 OK 72, ¶ 12, 554 P.2d 780, 784 (holding that rulings on motions for summary judgment are "to be made on the record the parties have actually presented and not on a record which is potentially possible"); Okla. D. Ct. R. 13(a) (explaining that "[a] party may move for [ ] summary judgment . . . on the merits on the ground that the evidentiary material *filed* with the motion or subsequently *filed* with leave of court show that there is no substantial controversy as to any material fact") (emphases added). In order to determine whether there is a controversy as to any material fact, appellate courts examine--"in a light most favorable to the nonmoving party," *Tiger v. Verdigris Valley Electric Cooperative*, 2016 OK 74, ¶ 13, 410 P.3d 1007, 1011 (citation omitted)--"the pleadings, affidavits, depositions, admissions, or other evidentiary materials" supporting the motion for summary judgment. *Evers v. FSE Overlake Association*, 2003 OK 53, ¶ 9, 77 P.3d 581, 584 (citation omitted). Grants of summary judgment are proper, and will be affirmed, when the evidentiary materials show "there is no substantial controversy as to any material fact and that the moving party is entitled to judgment as a matter of law." *Lowery v. Echostar Satellite Corp.*, 2007 OK 38, ¶ 11, 160 P.3d 959, 963--64 (citation omitted).

### ANALYSIS

¶9 This appeal is pending before the Court under Rule 1.36, Sup.Ct.R., regarding Accelerated Procedure for Summary Judgments and Certain Dismissals, and that, under that Rule, briefing by the Parties is not allowed (except as may be ordered by the appellate court). Pursuant to Rule 1.36(g), the Court "confines its review to the record actually presented to the trial court." Moreover, based on Rule 1.26(a) & (b), in light of Rule 1.36(g), we consider the legal issues to be presented to be only those issues identified or raised by Lawson in the Exhibit "C" attached to his Petition in Error. This is relevant because Lawson did not raise, as an issue in this appeal, whether the trial court erred with respect to its finding that summary judgment in favor of the Defendants was appropriate in relation to the incident of May 23, 2020. Additionally, although two issues were facially identified or raised in Lawson's Petition in Error, we view the Petition in Error to have essentially raised only one issue: i.e., whether the 911 Authority's policy concerning requests from the general public for information regarding warrants violates the Open Records Act. <sup>13</sup>

¶10 There is no dispute here that the 911 Authority is subject to the Open Records Act. See 51 O.S. § § 24A.3(2) (defining a "public body" to include "any entity created by a trust, county . . . supported in whole or in part by public funds or entrusted with the expenditure of public funds or administering or operating public property . . ."). There also is no dispute here that information regarding warrants falls within the definition of a "record" that is subject to the inspection and copying rule of the Open Records Act. See *Lawson v. Curnutt*, 2010 OK CIV APP 78, ¶ 7, 239 P.3d 192, 194.

¶11 The specific provision of the Open Records Act that is at issue here is § 24A.8A(6), which provides, in part, that:

A. Law enforcement agencies shall make available for public inspection and copying, if kept, the following records:

\*\*\*

6. **Disposition of all warrants**, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person;

\*\*\*

(emphasis added)

¶12 The deposition testimony of Slaughter shows that the 911 Authority does not provide access to information concerning warrants when requested by the general public because of a concern for the possibility that it may not possess accurate or the most current information regarding a warrant. He specifically testified that the 911 Authority "refer[s]" everyone to the court clerk's office or ODCR [i.e., [www.odcr.com](http://www.odcr.com)] to get the latest information."

¶13 The Defendants' explanation for its policy in question is supposedly based on a concern for the accuracy or completeness of the records in its possession. Despite that concern, as a matter of law, there exists no exception within the law to refuse a valid request to inspect and copy a record based on a concern for the accuracy or completeness of the records in an agency's possession. The Open Records Act addresses tangible "records" within an agency's possession, not the accuracy or completeness of the information that is reflected in the records.<sup>14</sup> In other words, the Open Records Act does not address the production of "information" in the abstract, separate and distinct from the production of the "records" in which "information" is stored.<sup>15</sup> Of course, an accurate production of records for inspection and copying is expected. An agency is not, however, a guarantor of the information reflected in the produced records. The preeminent duty of an agency, when faced with a valid open records request, is to timely and completely produce the requested documents for inspection and copying.<sup>16</sup>

¶14 Thus, the policy of the 911 Authority to refer a private individual to the Court Clerk's Office or to an on-line source found at [www.odcr.com](http://www.odcr.com) when warrant information has been requested constitutes a violation of § 24A.8 of the Open Records Act.<sup>17</sup> See *Shadid v. Hammond*, 2013 OK 103, ¶ 5, 315 P.3d 1008, 1009, as corrected (Dec. 11, 2013), J. Taylor concurring (where the court addressed the issue of the proper procedure to be utilized before a court may seal certain records in the court clerk's office and, thus, prevent access through the Open Records Act, Justice Taylor wrote, in part, that "[p]ublic records should remain public except in the most compelling of circumstances.").

¶15 On the other hand, Lawson erroneously argues that an agency is obligated by the Open Records Act to provide information over the phone. No such duty exists. The general statutory duty under the Open Records Act is established in 51 O.S. § 24A.5, which provides, subject to certain exceptions, that "[a]ll records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours . . .". See *Oklahoma Ass'n of Broadcasters, Inc. v. City of Norman, Norman Police Dep't*, 2016 OK 119, ¶ 15, 390 P.3d 689, 694 ("[t]he Legislature's emphatic message to government agencies is, unless otherwise specifically excluded, the public must have prompt and reasonable access to records."). In regard to the process or method through which an agency is obligated to respond to a valid Open Records Request, the Court in *Wagner v. Off. of Sheriff of Custer Cnty.*, 2021 OK CIV APP 20, ¶ 9, 492 P.3d 1240, where the requestor demanded that an agency produce documents via email, stated, in part, as follows:

[T]he only specific guidance the Act provides as to *how* a public body must provide access is that the access must be 'prompt' and 'reasonable.' 51 O.S. § 24A.5(6). Neither of these general requirements can transform the passive state of 'be[ing] open,' *id.* at § 24A.5, or 'mak[ing] available,' *id.* at § 24A.8, into the far more active requirement of responding to requests via email . . . . Although an agency is entirely *free* to embrace requests through email, it is not *required* to do so. Certainly, the failure to do so cannot be viewed as inherently unreasonable. Although the office would be protected from requests that would 'prevent excessive disruptions of its essential functions,' *id.* at § 24A.5(6), this protection does not somehow create an affirmative obligation on the agency to process records requests via email, or any other method. **Again, the only requirement is that the records be made available during regular business hours.** By holding his office open each weekday the sheriff complied with this requirement and thus complied with the statute.

*Id.*, at 1243 (emphasis added).

¶16 The allegation in ¶8 of the Petition was a claim for declarative and/or injunctive relief regarding the policy of the 911 Authority, and said claim was separate and distinct from the allegations made concerning the incident of May 23, 2020. See *Citizens Against Taxpayer Abuse, Inc. v. City of Oklahoma City*, 2003 OK 65, ¶ 8, 73 P.3d 871, 874 ("[t]he Open Records Act provides that 'any person denied access to a record of a public body or public official may bring a civil suit for declarative and/or injunctive relief'. 51 O.S.2001, § 24A.17(B)"); *Pinnacle Design, Inc. v. Buchanan*, 1995 OK CIV APP 5, 892 P.2d 660, 663 ("[i]n deciding an appeal from a summary judgment, if this court's search of the record discloses controverted material facts, or if the uncontroverted facts support legitimate inferences favoring the properly pleaded theory of the party against whom judgment was granted, the judgment should be reversed.").

¶17 The proper remedy here is for summary judgment to be awarded to Lawson on the declaratory judgment claim for relief and for the other findings in the trial court's Order of June 2, 2022, to remain undisturbed. We specifically find no error in the trial court's award of summary judgment to the Defendants in relation to the incident of May 23, 2020. We note that the record in this appeal demonstrates that, in response to the Defendants' Motion for Summary Judgment, the issue of whether to grant summary judgment in favor of Lawson was, as a matter of law, within the authority of the trial court, and this Court also possesses such authority. See *Heskett v. Heskett*, 1995 OK CIV APP 52, 896 P.2d 1200, 1202 (holding that, once a motion for summary judgment has been filed, if "it appears to the court that there is no substantial controversy as to any material fact and that one of the parties is entitled to judgment as a matter of law, the court shall render judgment to said party whether or not he is the

moving party."). The record shows that the trial court, in fact, considered the full range of the arguments by the Parties. See Rule 1.36(c)(A), Sup.Cr.R., defining the "Record on Appeal". For example, although Lawson's Response to the Motion for Summary Judgment did not, on its face, include a counter-motion for summary judgment, it included a copy of the deposition of Slaughter and made a cogent argument that the policy of the 911 Authority in question violates the Open Records Act.<sup>18</sup> We, therefore, hold that the trial court erroneously granted summary judgment to the 911 Authority on the declaratory judgment claim for relief and that no further presentation by the Parties or consideration by the trial court on this issue is warranted. See *Blutone Enterprises, LLC v. Messer-Bowers Co.*, 2016 OK CIV APP 7, ¶ 28, 366 P.3d 1150, 1157. ("[t]he settled-law-of-the-case doctrine 'operates to bar relitigation of (a) issues in a case which are finally settled by an appellate opinion or of (b) those the aggrieved party failed to raise on appeal.'" (citation omitted)).

### CONCLUSION

¶18 For the reasons provided, we reverse the trial court's Order entered June 2, 2022, in part, and specifically hold that summary judgment was erroneously granted to the 911 Authority on the claim for declaratory relief because the policy of 911 Authority to refer a private individual to the Court Clerk's Office or to an on-line source found at [www.odcr.com](http://www.odcr.com) when warrant information has been requested is a violation of § 24A.8 of the Open Records Act. We hold that summary judgment was erroneously granted to the Defendants on the declaratory judgment claim concerning the policy of the 911 Authority and, that, conversely, Lawson is entitled to summary judgment on that claim. Subject to the holding in this Opinion, the trial court's Order of June 2, 2022, is affirmed in all other respects. Thus, the trial court's order of June 2, 2022, is affirmed, in part, and reversed, in part.

MITCHELL, V.C.J., and SWINTON, J., concur.

### FOOTNOTES

THOMAS E. PRINCE, PRESIDING JUDGE:

<sup>1</sup> The Defendants are the Sequoyah County 911 Trust Authority ("911 Authority"), David Slaughter in his official [capacity] as Director of the Sequoyah County 911 Trust Authority ("Slaughter") (collectively, the "Defendants").

<sup>2</sup> The specific Open Records Act statute at issue here is 51 O.S. § 24A.8.

<sup>3</sup> May 23, 2020, was a Saturday, when the Court Clerk's Office would have been closed.

<sup>4</sup> Lawson Deposition, p. 7, lines 21-24.

<sup>5</sup> Slaughter Deposition, p. 12, line 1-5.

<sup>6</sup> Slaughter Deposition, pp.10, lines 6-8 & 15, lines 13-18.

<sup>7</sup> Slaughter Deposition, p. 11, lines 2-6.

<sup>8</sup> Slaughter Deposition, p. 18, lines 9-14.

<sup>9</sup> Slaughter Deposition, p. 12, lines 6-13.

<sup>10</sup> Slaughter Deposition, p. 18, lines 15-19, & p. 19, lines 6-7.

<sup>11</sup> Defendants' Motion for Summary Judgment filed March 8, 2022, p. 3.

<sup>12</sup> Plaintiff's Response filed March 31, 2022, p. 2.

<sup>13</sup> Lawson's Petition in Error raised whether the Defendant's policy of referring the public to either the Court Clerk's Office or On Demand Court Records to obtain warrants, even though the 911 Authority maintains copies of such warrants, and such warrants are subject to inspection pursuant to the Open Records Act, violates the Open Records Act. Secondly, Lawson raised whether the failure of the 911 Authority to make copies of warrants available for inspection, and instead, requiring the public, pursuant to its internal policy, to obtain such warrants from the Court Clerk's Office or On Demand Court Records, violates the Open Records Act.

<sup>14</sup> See *Oklahoma Ass'n of Broadcasters, Inc. v. City of Norman, Norman Police Dep't*, 2016 OK 119, ¶ 26, 390 P.3d 689, 696 ("Sections 24A.5 and 24A.6 of the Act provide that public bodies make their records available for 'inspection, copying, or mechanical reproduction' unless specific exemptions apply.").

<sup>15</sup> See *Kissinger v. Reps. Comm. for Freedom of the Press*, 445 U.S. 136, 151--52, 100 S. Ct. 960, 969, 63 L. Ed. 2d 267 (1980) ("[m]ost courts which have considered the question have concluded that the FOIA is only directed at requiring agencies to disclose those 'agency records' for which they have chosen to retain."); *Forsham v. Harris*, 445 U.S. 169, 185, 100 S. Ct. 977, 987, 63 L. Ed. 2d 293 (1980) (where the Court stated, in part, that "[t]he Freedom of Information Act deals with agency records, not information in the abstract.>").

<sup>16</sup> See *Citizens Against Taxpayer Abuse, Inc. v. City of Oklahoma City*, 2003 OK 65, ¶¶ 11-12, 73 P.3d 871, 875 ("[e]ach public body subject to the Act is responsible for making records available to the public. 51 O.S.2001, § 24A.5(5). Unless a record falls within a statutorily prescribed exemption in the Act, the record must be made available for public inspection. The public body urging an exemption has the burden to establish the applicability of such exemption. See *Merrill v. Oklahoma Tax Comm'n*, 1992 OK 53, ¶ 8, 831 P.2d 634, 641.>").

<sup>17</sup> This Court does not intend, by the ruling in this case, to forecast how it would rule in a future case with similar facts, save only that the open records act request had sought electronically stored records. That issue certainly could arise and be relevant because the ORA definition of "record" includes, not only books & paper items, but also "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 . . .". 51 O.S. § 24A.5(1). The definition of "record" specifically excludes, however, "compute software." *Id.* Using that broad definition, § 24A.5(6), dictates that an agency "must provide prompt, reasonable access to its records but may establish reasonable procedures which protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions."

<sup>18</sup> Plaintiff's Response filed March 31, 2022, p. 2.

### Citationizer® Summary of Documents Citing This Document

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<u>1976 OK 72, 554 P.2d 780,</u>	<u>WEEKS v. WEDGEWOOD VILLAGE, INC.</u>	Discussed
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<u>2016 OK 119, 390 P.3d 689,</u>	<u>OKLAHOMA ASSOC. OF BROADCASTERS, INC. v. CITY OF NORMAN</u>	Discussed at Length
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<u>51 O.S. 24A.8,</u>	<u>Law Enforcement Agency Records Available for Public Inspection</u>	Discussed
<u>51 O.S. 24A.17,</u>	<u>Violations of Oklahoma Open Records Act - Civil Liability</u>	Cited

