



IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

**ZIVA BRANSTETTER and BH Media  
Group Inc. d/b/a TULSA WORLD,**

**Plaintiffs,**

**v.**

**MARY FALLIN, in her official capacity as  
GOVERNOR OF THE STATE OF  
OKLAHOMA; MICHAEL C.  
THOMPSON, in his official capacity as  
COMMISSIONER OF THE OKLAHOMA  
DEPARTMENT OF PUBLIC SAFETY,**

**Defendants.**

**FILED IN DISTRICT COURT  
OKLAHOMA COUNTY**

**Case No. CV-14-2372  
Judge Bryan Dixon**

**MAY - 2 2016**

**TIM RHODES  
COURT CLERK**

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**FIRST AMENDED PETITION**

The Plaintiffs Ziva Branstetter and BH Media Group Inc d/b/a *Tulsa World* ("*Tulsa World*"), by and through their undersigned counsel, petition this Court for (1) an order pursuant to Okla. Stat. tit. 12, §§1381, *et seq.* temporarily and permanently enjoining Mary Fallin, Governor of the State of Oklahoma, and Michael C. Thompson, Commissioner of the Oklahoma Department of Public Safety ("DPS") (collectively, "Defendants"), from denying Plaintiffs access to specific public records, in whole and in part, in violation of the Oklahoma Open Records Act, Okla. Stat. tit. 51, §§24.A.1, *et seq.*, ("ORA") and the Constitution of the State of Oklahoma, including by utilizing unlawful practices and procedures for responding to ORA requests, (2) for a declaration of Defendants' responsibilities under the ORA and the Oklahoma Constitution with respect to providing access to their records, including to those specific public records requested by Plaintiffs, and (3) for a Writ of Mandamus directing Defendants to produce immediately all records requested by Plaintiffs and to henceforth comply with their obligations under the ORA and the Oklahoma Constitution with respect to providing access to their records, or to show cause why they should not be directed to do so. In support of this Amended Petition,

Plaintiffs allege and state the following:

### **PARTIES**

1. Plaintiff *Tulsa World* is the daily newspaper for the city of Tulsa, Oklahoma and is widely circulated in the State of Oklahoma. It is a for-profit publication wholly-owned by BH Media Group. Founded in 1905, *Tulsa World* provides breaking news and in-depth reporting on issues impacting Oklahomans through its print and online editions ([www.tulsaworld.com](http://www.tulsaworld.com)).

2. Plaintiff Ziva Branstetter (“Branstetter”) is the Editor-in-Chief and a staff writer for *The Frontier* ([www.readfrontier.com](http://www.readfrontier.com)), where she covers state government issues, including executions carried out by the State of Oklahoma. Branstetter is a former reporter and Enterprise Editor for *Tulsa World*.

3. Defendant Mary Fallin (“Fallin”) is a natural person and is currently the Governor of the State of Oklahoma. She has held that office since 2011.

4. Defendant Michael C. Thompson (“Thompson”) is a natural person and is currently the Commissioner of the Oklahoma Department of Public Safety, a position to which he was appointed by Fallin in 2011.

5. The Office of the Governor is a “public body” within the meaning of §24A.3(2) of the ORA.

6. The Oklahoma Department of Public Safety is a “public body” within the meaning of §24A.3(2) of the ORA.

7. As Governor of Oklahoma, Fallin is a “public official” within the meaning of §24A.3(4) of the ORA.

8. As Commissioner of the Oklahoma Department of Public Safety, Thompson is a

“public official” within the meaning of §24A.3(4) of the ORA.

9. Fallin’s place of business as Governor and Thompson’s place of business as Commissioner of the Oklahoma Department of Public Safety are located within Oklahoma County, Oklahoma. The dispute giving rise to this lawsuit arises from Open Records Act requests submitted by Plaintiffs to the Defendants seeking records in Defendants’ possession in Oklahoma County, Oklahoma.

### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction over this action pursuant to Okla. Stat. tit. 51, §24A.17, Okla. Stat. tit. 12, §1651, and Article VII, Section 7 of the Oklahoma Constitution.

11. Venue lies in this district under Okla. Stat. tit. 12, §133 and Okla. Stat. tit. 12, §1653.

### **STATEMENT OF FACTS**

#### **Background Facts**

12. Two men—Clayton Lockett (“Lockett”) and Charles Warner (“Warner”)—were scheduled to be executed by the State of Oklahoma on April 29, 2014. Plaintiffs are informed and believe that during Lockett’s execution, which began at or about 6:23 p.m. on April 29, and after Lockett was administered lethal execution drugs, his veins “exploded.”<sup>1</sup> Plaintiffs are informed and believe that Lockett died from a “massive heart attack” at or about 7:06 p.m., after his attempted execution had been halted by the State.<sup>2</sup> Fallin thereafter issued an executive order delaying Warner’s execution, which had been scheduled to begin at 8:00 p.m.

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<sup>1</sup> Ziva Branstetter & Cary Aspinwall, *Inmate Clayton Lockett dies of heart attack after botched execution; second execution postponed*, Tulsa World (Apr. 30, 2014), archived at <https://perma.cc/S8DZ-VPS6>.

<sup>2</sup> *Id.*

13. On or about April 30, 2014, Fallin issued an executive order appointing Thompson to conduct an independent review of the events leading up to and during the execution of Lockett. Pursuant to that executive order, the independent review (hereinafter the “DPS Investigation”) was to include, *inter alia*, an inquiry into Lockett’s cause of death, and an inquiry addressing whether the Oklahoma Department of Corrections correctly followed the agency’s current protocol for executions.

14. As part of the DPS Investigation, over 100 interviews were conducted by DPS with various government officials and other persons who were involved with and/or witnessed Lockett’s execution. Fallin and Thompson were among those interviewed by DPS. Plaintiffs are informed and believe that, as of August 12, 2014 at the latest, DPS had completed those interviews. DPS recorded those interviews and currently possesses audio recordings and/or transcripts of them.

15. Branstetter—then a reporter and Enterprise Editor for *Tulsa World*—was among the journalists present at the Oklahoma State Penitentiary to observe Lockett’s scheduled execution on April 29. Branstetter and *Tulsa World* covered Lockett’s botched execution, and in the months and years since that execution both *Tulsa World* and Branstetter—first for *Tulsa World* and then for *The Frontier*—have continued to report on the Lockett execution and its aftermath. Branstetter and *Tulsa World* have, combined, published more than a dozen stories relating to the Lockett execution and other executions subsequently carried out by the State.<sup>3</sup>

16. As a witness to Lockett’s botched execution, Branstetter was interviewed by DPS

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<sup>3</sup> See, e.g., Cary Aspinwall & Ziva Branstetter, *Secrets still shroud Clayton Lockett’s execution*, *Tulsa World* (May 11, 2014), *archived at* <https://perma.cc/VET7-SJQU>; Cary Aspinwall & Ziva Branstetter, *Records raise questions about who is in charge of Oklahoma executions*, *The Frontier* (Oct. 9, 2015), *archived at* <https://perma.cc/Y3XN-DA24>; Samantha Vincent, *Oklahoma State Penitentiary warden retires as state investigation into executions continues*, *Tulsa World* (Oct. 30, 2015), *archived at* <https://perma.cc/35PM-Z2DD>.

officials in connection with their independent review of the events leading up to and during Lockett's execution.

17. Warner was executed by the State of Oklahoma on January 15, 2015.<sup>4</sup>

18. Warner was executed during the pendency of a civil lawsuit that he, along with other Oklahoma death row inmates, had filed against the State challenging the constitutionality of its lethal injection protocol. That civil lawsuit—*Warner, et. al v. Gross, et. al*, No. CIV-14-665-F (W.D. Okla., filed June 25, 2014), later captioned *Glossip, et al. v. Gross, et al.*, (hereinafter the “*Glossip Matter*”)—was filed within two months of Lockett's botched execution, and after Plaintiffs had submitted the first two of their three ORA requests that are at issue in this case.

19. While the ORA requests at issue in this case have been pending, the *Glossip Matter* was resolved by the federal courts. In a decision issued on June 29, 2015, the U.S. Supreme Court declined to find Oklahoma's lethal injection protocol—which had been represented to the Court as consisting of the administration of midazolam, followed by a paralytic agent and potassium chloride—unconstitutional. *Glossip, et al. v. Gross, et al.*, 135 S. Ct. 2726, 2735 (2015) (stating that “Oklahoma executed Warner using . . . the combination of midazolam, a paralytic agent, and potassium chloride.”)

20. It was later reported that the State administered potassium acetate to Warner during his execution—not potassium chloride as the execution log stated, and as was represented to Warner's attorney and the U.S. Supreme Court.<sup>5</sup>

21. On or about April 17, 2015, before the U.S Supreme Court heard oral arguments

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<sup>4</sup> See Nolan Clay & Rick Green, *Wrong drug used for January execution, state records show*, The Oklahoman (Oct. 8, 2015), archived at <https://perma.cc/YQ72-NQ6U>.

<sup>5</sup> *Id.*

in the *Glossip* Matter, Fallin signed HB 1879 into law, making “nitrogen hypoxia” Oklahoma’s default method of execution in the event lethal injection drugs become unavailable or Oklahoma’s execution protocol is held unconstitutional. Before it was passed by the Oklahoma Legislature and approved by the Governor, the new law was widely reported on and discussed within the State and around the nation.<sup>6</sup>

22. As alleged herein, since May, 2014, Plaintiffs and the public have been denied access by Defendants to public records and portions thereof requested by Plaintiffs under Oklahoma’s ORA that pertain to the executions of Warner and Lockett, the involvement of the Governor’s Office in and its response to those executions, and DPS’s Investigation.

*Plaintiffs’ Open Records Act Request to the Governor’s Office*

23. On or about May 1, 2014, within days of Lockett’s botched execution, Branstetter, as a reporter and Enterprise Editor for *Tulsa World*, sent the Office of Governor Fallin a written request for specified public records under the Oklahoma ORA. Specifically, Branstetter requested “[a]ll records, including emails, associated with the execution of Clayton Lockett and Charles Warner dating from March 1 to the present.” Branstetter “agree[d] to limit [the] request to emails (whether on a personal email account or state email account) to email communications between the governor’s office and DOC Director Robert Patton, Jerry Massie or Anita Trammell; DPS Commissioner Michael Thompson; the governor’s legal staff including Steve Mullins; Denise Northrup; Attorney General Scott Pruitt or Melissa McLawhorn Houston

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<sup>6</sup> See, e.g., Barbara Hoberock, *Oklahoma Gov. Mary Fallin signs bill adding nitrogen gas as state execution method*, *Tulsa World* (Apr. 18, 2015), *archived at* <https://perma.cc/DPX3-J76N>; Josh Sanburn, *The Dawn of a New Form of Capital Punishment*, *Time* (Apr. 17, 2015), *archived at* <https://perma.cc/7MVZ-74JH> (noting that “[t]he law marks a new frontier in the increasingly charged debate over the future of capital punishment in America. And it ensured that the state where lethal injection originated three decades ago has resumed its place as the nation’s execution laboratory.”).

(or assistants acting on their behalf) and of course any emails from the governor herself,” as well as “any communications between the governor’s office and the state Supreme Court justices or staff acting on their behalf.” A true and correct copy of Plaintiffs’ May 1 ORA request is attached hereto as **Exhibit A**.

24. On or about May 2, 2014, the Office of Governor Fallin responded via email to Plaintiffs’ May 1 ORA request. In that response, a true and correct copy of which is attached hereto as **Exhibit B**, the Office of the Governor stated that Plaintiffs’ request had been “placed [] in the queue of Open Record Requests” and assigned the number 2014-016.

25. Plaintiffs are informed and believe that the Office of the Governor, upon receipt of Plaintiffs’ May 1 Open Records Act request, took no action to preserve records responsive to that request. Plaintiffs are informed and believe that since Plaintiffs’ May 1 Open Records Act request was submitted, the Office of the Governor has refused and/or failed to take reasonable steps to preserve records responsive to that request.

26. Plaintiffs are informed and believe that the Office of the Governor took no action whatsoever to process Plaintiffs’ May 1 ORA request until almost four months after it was received, on or about August 28, 2014, when staff within the Office of the Governor were first instructed to conduct a search for electronic records responsive to Plaintiffs’ May 1 ORA request.

27. Plaintiffs filed the above-captioned lawsuit on December 22, 2014, more than seven months after Plaintiffs submitted their May 1 ORA request. As of the filing of the above-captioned lawsuit, the Office of the Governor had not released a single document in response to Plaintiffs’ May 1 ORA request.

28. On or about October 8, 2015, approximately seventeen months after Plaintiffs

May 1 ORA request was submitted, and after the U.S. Supreme Court issued its ruling in the *Glossip* Matter, the Office of the Governor released approximately 41,697 pages of records, many in heavily redacted form, purportedly in response to Plaintiffs' May 1 ORA request.

29. The records released to Plaintiffs by the Office of the Governor on October 8, 2015 include a significant number of records that are not responsive to Plaintiffs' May 1 ORA request.

30. The Office of the Governor has also withheld and continues to withhold portions of a number of records that it released, in part, to Plaintiffs on October 8, 2015. Specifically, the records released to Plaintiffs by the Governor's Office on October 8, 2015 contain a number of redacted records, as well as at least seventeen (17) pages of records with encrypted content.

31. The Office of the Governor has also withheld and continues to withhold certain records in their entirety that it has identified as responsive to Plaintiffs' May 1 ORA request. Specifically, Plaintiffs are informed and believe that the Office of the Governor is withholding at least 39 records consisting of 54 pages of material that it has identified as responsive to Plaintiffs' May 1 ORA request.

32. The Office of the Governor has also refused and/or failed to conduct an adequate search for records responsive to Plaintiffs' May 1 ORA request.

33. Among other things, despite the fact that Plaintiffs' May 1 ORA request explicitly stated that Plaintiffs were seeking "emails (whether on a personal email account or state email account)," Plaintiffs are informed and believe that the Office of the Governor did not search for or otherwise attempt to obtain records responsive to Plaintiffs' May 1 ORA request that are or were maintained on non-governmental email accounts.

34. Plaintiffs are informed and believe that Governor Fallin has used at least one non-



governmental email address—maryfallin@sbcglobal.net—to conduct government business.

35. Plaintiffs are informed and believe that non-governmental email accounts used by the Governor, including the maryfallin@sbcglobal.net email account, contain or contained records responsive to Plaintiffs' May 1 ORA request.

36. Plaintiffs are informed and believe that the Office of the Governor did not search for or otherwise attempt to obtain records responsive to Plaintiffs' May 1 ORA request that are or were maintained on the maryfallin@sbcglobal.net email account, or any other non-governmental email account used by the Governor.

37. Plaintiffs are informed and believe that other members of the Governor's current and former staff use or have used non-governmental email accounts to conduct government business and that such email accounts contain or contained records responsive to Plaintiffs' May 1 ORA request.

38. Plaintiffs are informed and believe that the Governor's Office did not search for or otherwise attempt to obtain records responsive to Plaintiffs' May 1 ORA request that are or were maintained on non-governmental email accounts utilized by members of the Governor's current and/or former staff.

39. As of the filing of this Amended Petition, it has been approximately seven hundred and four (704) days since Plaintiffs' May 1, 2014 ORA request was submitted to the Governor's Office.

*Plaintiffs' Open Records Act Requests to the Department of Public Safety*

40. On or about May 5, 2014, within days of Lockett's botched execution, Branstetter, as a reporter and Enterprise Editor for *Tulsa World*, sent DPS a written request for specified public records under the Oklahoma ORA. Specifically, in an email to Cpt. George

Brown ("Brown"), head of DPS public affairs, Branstetter requested "all email to or from Commissioner Michael Thompson and Steve Krise or assistants acting on their behalf—regardless of who sent or received these emails—regarding the execution of Clayton Lockett and Charles Warner and any related policy issues since April 1." A true and correct copy of that request is attached hereto as **Exhibit C**.

41. Brown confirmed receipt of Plaintiffs' May 5 ORA request in an email to Branstetter dated May 7, 2014, in which he stated that he was "waiting to hear back regarding [the] email request."

42. On or about August 12, 2014, Branstetter received an email from Brown on behalf of DPS stating, among other things, that DPS's Legal Division was "conducting a review to determine which [emails responsive to Plaintiffs' May 5 ORA request], if any, may contain privileged or confidential information that is not subject to an open record request." Brown estimated that review would "take up to another three months" to complete. A true and correct copy of that August 12 email is attached hereto as **Exhibit D**.

43. On or about September 4, 2014, Branstetter, as a reporter and Enterprise Editor for *Tulsa World*, submitted another written request to DPS for specified public records under the Oklahoma ORA. Specifically, in an email to Brown, Branstetter requested "copies of all full statements by the official media witnesses to the Lockett execution as well as statements by any public official who witnessed the execution, including Commissioner Michael Thompson," and "copies of statements by the paramedic and physician attending the execution." A true and correct copy of Plaintiffs' September 4 ORA request is attached hereto as **Exhibit E**.

44. That same day, Branstetter received a response, via email, from Brown stating that he had "received your official open records request dated 9/4/14 and will review it for

consideration and processing.” A true and correct copy of DPS’s response to Plaintiffs’ September 4 ORA request is attached hereto as **Exhibit F**.

45. On or about September 17, 2014, Branstetter, in a telephone call with Brown, inquired as to the status of the September 4 ORA request to DPS. During that telephone call, Brown informed Branstetter that DPS was reviewing approximately 5,000 pages of material gathered in connection with its investigation, including transcripts of interviews. Brown further informed Branstetter that, after redacting from that material the information it was required by law to redact, DPS intended to make the material available to the public via its website.

46. Plaintiffs are informed and believe that records responsive to both Plaintiffs’ May 5 and their September 4 ORA requests were searched for and/or collected by DPS in connection with the *Glossip* Matter, which was, at the time that search was conducted, pending in the United States District Court for the Western District of Oklahoma.

47. Certain records—including transcripts of interviews of witnesses conducted in connection with the DPS Investigation—responsive to Plaintiffs’ September 4 ORA request were reviewed, redacted, and produced to the plaintiffs in the *Glossip* Matter by DPS.

48. Redacted interview transcripts from the DPS Investigation were produced to the plaintiffs in the *Glossip* Matter on or around November 15, 2014.

49. On or about November 17, 2014, Branstetter, following up on Plaintiffs’ September 4 ORA request, asked that DPS immediately release copies of the interview transcripts related to the DPS’s Investigation, citing their production in the *Glossip* Matter. Specifically, in an email to Brown, Branstetter stated: “I request copies of all transcripts created in connection with the Clayton Lockett investigation in electronic format under the Open Records Act. I know Judge Friot ordered DPS to produce them [in the *Glossip* Matter] by Nov.

15 and they're already redacted. Please inform me if the documents are not in electronic format and if I need anything else to obtain them." A true and correct copy of that email is attached hereto as **Exhibit G**.

50. Plaintiffs filed the above-captioned lawsuit on December 22, 2014, more than three months after Plaintiffs submitted their September 4 ORA request. As of the filing of the above-captioned lawsuit, DPS had not released a single document in response to Plaintiffs' September 4 ORA request. Nor, to Plaintiffs' knowledge, had DPS made such records available to the public on its website, or otherwise.

51. More than two months after Plaintiffs filed the above-captioned lawsuit, on or about March 13, 2015, DPS released to Plaintiffs approximately 5,274 pages of records, many in heavily redacted form.

52. The records released to Plaintiffs by DPS on March 13, 2015 were responsive to Plaintiffs' September 4 ORA request. DPS's March 13, 2015 production did not include any records released in response to Plaintiffs' earlier May 5 ORA request.

53. Approximately nine months after Plaintiffs September 4 ORA request was submitted to DPS, on or about June 9, 2015, DPS released to Plaintiffs another approximately 5,017 pages of records, many in heavily redacted form.

54. The records released to Plaintiffs by DPS on June 9, 2015 were also responsive to Plaintiffs' September 4 ORA request. DPS's June 9, 2015 production did not include any records released in response to Plaintiffs' earlier May 5 ORA request.

55. As of the filing of this Amended Petition, DPS has not released a single record in response to Plaintiffs' May 5 ORA request.

56. Plaintiffs are informed and believe that DPS has refused and/or failed to take

reasonable steps to preserve records responsive to Plaintiffs' May 5 and September 4 ORA requests.

57. DPS has also refused and/or failed to conduct an adequate search for records responsive to Plaintiffs' May 5 and September 4 ORA requests.

58. DPS has withheld and continues to withhold certain records responsive to Plaintiffs' ORA requests.

59. DPS has also withheld and continues to withhold portions of a number of records that it released, in part, to Plaintiffs on March 13 and June 9, 2015 in response to Plaintiffs' September 4 ORA request. Specifically, the records released to Plaintiffs by DPS contain a number of redacted records.

60. It has been approximately seven hundred (700) days since Plaintiffs' May 5, 2014 ORA request was submitted, and approximately five hundred and seventy-eight (578) days since Plaintiffs' September 4, 2014 ORA request was submitted.

**Practices and Procedures Used by the Office of the Governor for Responding to ORA Requests, including Plaintiffs' ORA Requests, Violate Oklahoma Law**

61. In 2012 the Office of the Governor began to utilize certain practices and procedures—both formal and informal—for responding to ORA requests.

62. The practices and procedures utilized by the Office of the Governor since 2012 for responding to ORA requests have resulted in a significant backlog of pending Open Records Act requests, unreasonable delays in the processing of certain ORA requests, and the routine denial of prompt, reasonable public access to records of the Office of the Governor, including with respect to Plaintiffs' May 1 ORA request.

63. For example, Plaintiffs are informed and believe that an ORA request submitted in 2012 that resulted in the release of approximately 400 pages of records took the Office of the

Governor approximately two weeks to process. Plaintiffs are informed and believe that the first ORA request submitted in 2014, however, which resulted in the release of only 22 pages of records, took the Office of the Governor more than six months to process.

64. Plaintiffs are informed and believe that since 2012 the Office of the Governor has not made at least one person available at all times to release records to the public in response to ORA requests during the regular business hours of the Governor's Office.

65. Plaintiffs are informed and believe that the Governor's Office will not begin processing certain ORA requests—including Plaintiffs' May 1 ORA request—until months after such requests are received.

66. Plaintiffs are informed and believe that the Governor's Office does not take reasonable steps to preserve records responsive to ORA requests—including Plaintiffs' May 1 ORA request—while such requests are pending or awaiting processing.

67. At all relevant times, the Governor's Office has tasked a single full-time employee with the initial processing of all ORA requests in addition to that employee's "primary" or "regular" job duties. Records gathered and reviewed in response to an ORA request are generally subjected to at least one—and often more than one—additional round of review by other members of the Governor's staff before they will be released to the requestor.

68. ORA requests and/or public records responsive to such requests that are deemed "sensitiv[e]" are "red-flagged" by members of the Governor's staff and subjected to additional review prior to their release.

69. Fallin has represented that since 2012 the Office of the Governor has used a "queue" system for responding to ORA requests that operates on a "first come, first served" basis.

70. The written ORA policy of the Office of the Governor does not refer to or describe a "queue" or "queue"-like system for responding to ORA requests.

71. Plaintiffs are informed and believe that not all ORA requests or requests for access to government records made to the Office of the Governor are placed in the "queue" by members of the Governor's staff.

72. The Office of the Governor does not respond to and/or release records in response to ORA requests in the order in which those requests are received (*i.e.*, on a "first come, first served" basis).

73. For example, the Office of the Governor regularly combines narrow or discreet ORA requests with broader requests submitted by other members of the press and the public regardless of the order in which those requests are received. Among other things, this practice increases the processing time and delays the release of records in response to narrow or discreet ORA requests. It also results in records responsive to certain ORA requests being released before earlier-submitted requests have been processed.

74. Plaintiffs are informed and believe that their May 1 ORA request was combined with a number of broader ORA requests, including a request made by a reporter for the Associated Press. Plaintiffs are informed and believe that the Office of the Governor released some records in response to Plaintiffs' May 1 ORA request at the same time that it released records in response to other ORA requests submitted after May 1.

75. Upon information and belief, the Office of the Governor also delays and/or responds more quickly to certain ORA requests based on the identity of the requestor and/or the subject matter of the request, including to avoid, delay, or otherwise attempt to control media coverage that the Governor, members of her staff, and/or other government agencies or officials

perceive to be adverse.

76. On or about December 14, 2012, Branstetter, as a reporter for *Tulsa World*, submitted an ORA request to the Office of the Governor seeking copies of ORA requests made in 2012. Approximately two months later, on or about February 14, 2013, an ORA request was submitted to the Office of the Governor by another requestor also seeking copies of ORA requests made in 2012. In connection with that later request, the Governor's then-spokesman Alex Weintz ("Weintz") told another member of the Governor's staff, Audrey Rockwell ("Rockwell"), via email that "it'd be great to just get the docs back to him quickly so we can be as responsive as possible." Rockwell responded: "We can get it to him; however, just fyi... we have a similar request pending from the *Tulsa World* that we have not responded to yet (because we put it in the 'que' [sic])." True and correct copies of these emails between Weintz and Rockwell are attached as **Exhibit H**.

77. The Office of the Governor released records in response to the other requestor's February 14 ORA request approximately five days later, on or about February 19, 2013. The Governor's Office released records in response to Plaintiffs' similar and earlier-submitted December 14 ORA request approximately four months after that, on or about June 5, 2013.

78. On April 3, 2013, Branstetter, as a reporter for *Tulsa World*, sent an ORA request to the Office of the Governor seeking records relating to a \$6 million federal penalty imposed on Oklahoma by the federal government. The Office of the Governor responded to that ORA request on February 20, 2014, almost one year later, with a one-page letter stating that it had no records responsive to the request. Between April 3, 2013 and February 20, 2014, while that request was pending, the Office of the Governor received and responded to a number of other ORA requests submitted by other requesters.



79. Branstetter is an experienced investigative reporter who has covered Oklahoma government and politics for the past two decades, including for the *Tulsa World*. Branstetter and *Tulsa World*, among other things, have written extensively and published a number of articles about executions carried out by the State, including the botched execution of Lockett, which captured national attention, and exposed government officials, including the Governor, to scrutiny and criticism. In April 2015, Branstetter and her fellow reporter Cary Aspinwall (“Aspinwall”) were named finalists for the 2015 Pulitzer Prize in Local Reporting for their coverage of the Lockett execution for *Tulsa World*.

80. Plaintiffs’ reporting on executions, including the Lockett and Warner executions, has not gone unnoticed by the Governor and her staff who, among other things, have circulated copies of articles written and/or published by Plaintiffs to the Governor. For example, on June 24, 2014, Alex Gerszewski, then-Deputy Press Secretary for the Governor, sent the Governor a copy of a *Tulsa World* article written by Branstetter and Aspinwall reporting on the State’s failure to conduct autopsies on the majority of inmates executed since 1990. On information and belief, the article was sent directly to the Governor at the following non-governmental email address: maryfallin@sbcglobal.net. A true and correct copy of the first page of that email is attached hereto as **Exhibit I**.

81. Plaintiffs are informed and believe that since May 1, 2014, while Plaintiffs’ May 1 ORA request that is at issue in this lawsuit has been pending, the Office of the Governor has received and responded to other ORA requests.

82. Plaintiffs are informed and believe that the Office of the Governor processed and released approximately 122,554 pages of records—almost three times as many pages as it released in response to Plaintiffs’ May 1 ORA request—in fewer than 15 months in response to

an ORA request submitted in April of 2014.

83. Plaintiffs are further informed and believe that the Office of the Governor processed and released more than 51,000 pages of records in fewer than five months in response to an ORA request submitted in 2012.

**Practices and Procedures Used by DPS for Responding to ORA Requests, including Plaintiffs' ORA Requests, Violate Oklahoma Law**

84. At all relevant times, DPS has utilized certain practices and procedures—both formal and informal—for responding to ORA requests.

85. The practices and procedures utilized by DPS for responding to ORA requests have resulted in a significant backlog of pending ORA requests, unreasonable delays in the processing of certain ORA requests, and the routine denial of prompt, reasonable public access to records of DPS, including with respect to Plaintiffs' May 5 and September 4 ORA requests.

86. Plaintiffs are informed and believe that, at all relevant times, DPS has not made at least one person available at all times to release records to the public in response to ORA requests during DPS's regular business hours.

87. DPS has represented that at all relevant times it has used a "queue" system for responding to ORA requests.

88. Plaintiffs are informed and believe that not all ORA requests or requests for access to government records made to DPS are placed in the "queue."

89. While DPS's regulations state that ORA "[r]equests are processed in the order they are received by" DPS, Okla. Admin. Code § 595:1-9-5(d), DPS frequently does not respond to and/or release records in response to ORA requests in the order in which those requests are received by DPS. Plaintiffs are informed and believe that some ORA requests received by DPS are responded to "early and out of order."

90. Upon information and belief, DPS delays and/or responds more quickly to certain ORA requests based on the identity of the requestor and/or the subject matter of the request, including to avoid, delay, or otherwise attempt to control media coverage that Thompson, other DPS employees, and/or other government agencies or officials perceive to be adverse.

91. Upon information and belief, DPS employees, including Thompson, confer with the Governor and/or members of her staff concerning ORA requests received by DPS that Thompson, other DPS employees, and/or other government agencies or officials believe may result in media coverage.

92. Branstetter and *Tulsa World* published articles regarding Lockett's execution based on records released by DPS during the course of this case.<sup>7</sup>

93. Plaintiffs are informed and believe that their May 5 and September 4 ORA requests to DPS were not placed in DPS's "queue."

94. Plaintiffs are informed and believe that since May 5, 2014, while Plaintiffs' May 5 ORA request that is at issue in this lawsuit has been pending, DPS has received and responded to other Open Records Act requests submitted to DPS.

## **CAUSES OF ACTION**

### **Count I**

#### **Violation of the Oklahoma Open Records Act for Unlawful Withholding of Records Responsive to Plaintiffs' May 1, May 5, and September 4 Open Records Act Requests (All Defendants)**

1. Plaintiffs repeat, reallege, and incorporate the allegations set forth in foregoing paragraphs as though fully set forth herein.

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<sup>7</sup> See Cary Aspinwall & Ziva Branstetter, *Records reveal lack of protocol in Clayton Lockett's Oklahoma execution*, *Tulsa World* (Mar. 16, 2015), archived at <https://perma.cc/E5W6-ZB5N>; Cary Aspinwall & Ziva Branstetter, *Execution records show depth of secrecy*, *Tulsa World* (Mar. 17, 2015), archived at <https://perma.cc/43GZ-D6YS>.

2. The ORA mandates that “[a]ll records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction . . . .” Okla. Stat. tit. 51, §24A.5. “A public body must provide prompt, reasonable access to its records” to members of the press and the public upon request. *Id.* at §24A.5(5).

3. The records sought by Plaintiffs are records of public bodies and public officials, as defined by the ORA.

4. Plaintiffs properly requested access to such records pursuant to the ORA specifically requesting, *inter alia*, emails contained in non-governmental email accounts.

5. Defendants have denied access to and withheld records in whole and in part that are responsive to Plaintiffs’ ORA requests, including by failing to conduct an adequate search for such records located on non-governmental email accounts.

6. Some or all of the records or portions thereof that Defendants have withheld and denied Plaintiffs access to are required to be released pursuant to the ORA.

7. Defendants’ denials and withholding of records requested by Plaintiffs amounts to an abrogation of their duties under the ORA and is a violation of Oklahoma law.

**Count II**  
**Violation of the Oklahoma Open Records Act for Employing Unlawful Practices and/or**  
**Procedures for Responding to Open Records Act Requests**  
**(All Defendants)**

8. Plaintiffs repeat, reallege, and incorporate the allegations set forth in foregoing paragraphs as though fully set forth herein.

9. The ORA mandates 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 . . . .” Okla. Stat. tit. 51, §24A.5. “A public body must provide prompt, reasonable access to its records” to members of the press and the public upon request. *Id.* at

§24A.5(5).

10. The ORA mandates that a public body “designate certain persons who are authorized to release records of the public body for inspection, copying, or mechanical reproduction.” *Id.* at §24A.5(6). The ORA further mandates that “[a]t least one person shall be available at all times to release records during the regular business hours of the public body.” *Id.*

11. Defendants have designed, implemented, and employed practices and/or procedures for responding to ORA requests that deprive the press and the public of prompt, reasonable access to their records, in violation of the ORA.

12. Among other things, Defendants do not make at least one person available at all times to release records during their regular business hours, in violation of the ORA.

13. Defendants applied said unlawful practices and/or procedures to Plaintiffs’ May 1, May 5, and September 4 ORA requests.

14. Defendants’ actions amount to an abrogation of their duties under the ORA, and are violations of Oklahoma law.

**Count III**  
**Violation of the Oklahoma Constitution, Article II, § 1, for Withholding Government**  
**Information Requested by Plaintiffs on May 1, May 5, and September 4, 2014**  
**(All Defendants)**

15. Plaintiffs repeat, reallege, and incorporate the allegations set forth in foregoing paragraphs as though fully set forth herein.

16. Article II, Section 1 of the Oklahoma Constitution states that “[a]ll political power is inherent in the people; and government is instituted for their protection, security, and benefit, and to promote their general welfare; and they have the right to alter or reform the same whenever the public good may require it . . . .” O.K. Const. art II, §1.

17. Access to information about and from the State is an inherent, fundamental right

necessary for the citizens of Oklahoma to exercise the political power expressly reserved to them under the Oklahoma Constitution. This is reflected in the preamble to the ORA, which states that “[a]s the Oklahoma Constitution recognizes and guarantees, all political power is inherent in the people” and, thus, “the people are vested with the inherent right to know and be fully informed about their government.” Okla. Stat. tit. 51, §24A.2.

18. Members of the press, including Plaintiffs, play an essential role in keeping the citizens of the State of Oklahoma informed as to the actions of government agencies and officials, like Defendants, including by gathering and reporting information contained in government records.

19. Defendants have withheld and are continuing to withhold specific government records and portions thereof from Plaintiffs and, accordingly, from the public concerning the State of Oklahoma’s execution of criminal defendants.

20. Access to such information is necessary for the citizens of Oklahoma to be informed about the workings of their government and the conduct of their elected officials. Absent such information, citizens of Oklahoma, including Branstetter, cannot meaningfully engage in the political process and/or petition their elected representatives concerning policy and other issues relating to the manner in which death sentences are carried out by the State.

21. Plaintiffs and the public were deprived of information contained in the specific government records requested by Plaintiffs while the Oklahoma Legislature passed, and the Governor approved, new legislation concerning the manner in which death sentences are carried out by the State, while the U.S. Supreme Court considered and issued a decision in the *Glossip* Matter, and while Warner was executed by the State of Oklahoma.

22. The information contained in the specific government records requested by

Plaintiffs was and continues to be needed by the public, particularly given the questions raised by the manner in which the State of Oklahoma carried out the executions of Lockett and Warner.

23. Further, Defendants have designed, implemented, and employ practices and/or procedures for responding to requests for access to government records that, as a result of their application to Plaintiffs' requests, have deprived and continue to deprive Plaintiffs and the public of prompt, reasonable access to government information that the public is entitled to as a matter of right.

24. Defendants' actions infringe upon the inherent right of all citizens of the State of Oklahoma, including Branstetter, to engage in self-governance as guaranteed by Article II, Section 1 of the Oklahoma Constitution.

**Count IV**  
**Violation of the Oklahoma Constitution, Article II, § 1 for Employing Unlawful Practices**  
**and Procedures for Responding to Requests for Government Information**  
**(All Defendants)**

25. Plaintiffs repeat, reallege, and incorporate the allegations set forth in foregoing paragraphs as though fully set forth herein.

26. Article II, Section 1 of the Oklahoma Constitution states that "[a]ll political power is inherent in the people; and government is instituted for their protection, security, and benefit, and to promote their general welfare; and they have the right to alter or reform the same whenever the public good may require it . . . ." O.K. Const. art II, § 1.

27. Access to information about and from the State is an inherent, fundamental right necessary for the citizens of Oklahoma to exercise the political power expressly reserved to them under the Oklahoma Constitution. This is reflected in the preamble to the ORA, which states that "[a]s the Oklahoma Constitution recognizes and guarantees, all political power is inherent in the people" and, thus, "the people are vested with the inherent right to know and be fully

informed about their government.” Okla. Stat. tit. 51, §24A.2.

28. Access to such information is necessary for the citizens of Oklahoma to be informed about the workings of their government and the conduct of their elected officials. Absent such information, citizens of Oklahoma, including Branstetter, cannot meaningfully engage in the political process and/or petition their elected representatives.

29. Defendants have designed, implemented, and employ practices and/or procedures for responding to requests for access to government records that have systematically deprived and continue to deprive Plaintiffs and the public of prompt, reasonable access to government records and government information that the public is entitled to as a matter of right.

30. Defendants’ actions infringe upon the inherent right of the citizens of the State of Oklahoma, including Branstetter, to engage in self-governance as guaranteed by Article II, Section 1 of the Oklahoma Constitution.

**Count V**  
**Violation of the Oklahoma Constitution, Article II, § 22 for Defendants’ Disparate**  
**Treatment of Plaintiffs’ May 1, May 5, and September 4, 2014 Requests**  
**(All Defendants)**

31. Plaintiffs repeat, reallege, and incorporate the allegations set forth in foregoing paragraphs as though fully set forth herein.

32. Article II, Section 22 of the Oklahoma Constitution states, in part, that “no law shall be passed to restrain or abridge the liberty of speech or of the press.”

33. Defendants have delayed and continue to delay responding to requests made by Plaintiffs for access to specific government records concerning the executions of Lockett and Warner due to the subject matter of those requests, the identities of Plaintiffs as members of the news media, and/or the content of previous articles written or published by Plaintiffs.

34. Defendants have withheld and continue to withhold specific government records



and portions thereof requested by Plaintiffs concerning the executions of Lockett and Warner due to the subject matter of Plaintiffs' requests, the identities of Plaintiffs, and/or the content of previous articles written or published by Plaintiffs.

35. Defendants' actions have infringed, restrained, and abridged the right of Plaintiffs to gather and disseminate information to the citizens of the State of Oklahoma, in violation of Article II, Section 22 of the Oklahoma Constitution.

**Count VI**  
**Violation of the Oklahoma Constitution, Article II, § 22 for Employing Unlawful Practices**  
**and Procedures with Respect to Requests for Government Records Made by Members of**  
**the News Media**  
**(All Defendants)**

36. Plaintiffs repeat, reallege, and incorporate the allegations set forth in foregoing paragraphs as though fully set forth herein.

37. Article II, Section 22 of the Oklahoma Constitution states, in part, that "no law shall be passed to restrain or abridge the liberty of speech or of the press."

38. Defendants have designed, implemented, and employ practices and/or procedures for responding to requests for access to government records that infringe upon the ability of members of the press, including Plaintiffs, to gather and report information about the conduct of government agencies and government officials like Defendants.

39. Those practices and/or procedures include responding to requests for access to specific government records out of order, delaying responses to certain such requests, and/or withholding government records responsive to certain such requests, based on the subject matter of the request, the requester's identity as a member of the news media, and/or the content of previous articles written or published by the requester.

40. Defendants' actions have infringed, restrained, and abridged the right of the press, including Plaintiffs, to gather and disseminate information to the citizens of the State of Oklahoma, in violation of Article II, Section 22 of the Oklahoma Constitution.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that the Court:

1. Issue a declaration, pursuant to Okla. Stat. tit. 51, §24A.17(B) and Okla. Stat. tit. 12, §1651, that the records requested by Plaintiffs on May 1, May 5, and September 4, 2014 are public records for purposes of the ORA, and that Plaintiffs are entitled to prompt disclosure of the requested records;

2. Issue a declaration, pursuant to Okla. Stat. tit. 51, §24A.17(B) and Okla. Stat. tit. 12, §1651, that Defendants have failed to conduct an adequate search for records responsive to Plaintiffs' May 1, May 5, and September 4 ORA requests, as required by the ORA;

3. Issue an injunction, pursuant to Okla. Stat. tit. 51, §24A.17(B) and Okla. Stat. tit. 12, §§1381, *et seq.*, requiring Defendants to immediately release to Plaintiffs all records responsive to their May 1, May 5, and September 4 ORA requests pursuant to the ORA;

4. Issue a declaration, pursuant to Okla. Stat. tit. 51, §24A.17(B) and Okla. Stat. tit. 12, §1651, that Defendants' practices and/or procedures for responding to ORA requests are unlawful, including because Defendants fail to provide the public with prompt, reasonable access to their records upon request, as required by Okla. Stat. tit. 51, §24A.5(5), and fail to make at least one person available at all times to release records during their regular business hours, as required by Okla. Stat. tit. 51, §24A.5(6), and enjoin Defendants from continuing to utilize such

practices and/or procedures pursuant to Okla. Stat. tit. 51, §24A.17(B) and Okla. Stat. tit. 12, §§1381, *et seq.*;

5. Issue a declaration, pursuant to Okla. Stat. tit. 12, §1651, that Plaintiffs have a right to the information contained in the government records they requested from Defendants on May 1, May 5, and September 4, 2014 under Article II, Section 1 of the Oklahoma Constitution and enjoin Defendants from withholding such information pursuant to Okla. Stat. tit. 12, §§1381, *et seq.*;

6. Issue a declaration, pursuant to Okla. Stat. tit. 12, §1651, that Defendants' practices and/or procedures for responding to requests for access to government records violate Article II, Section 1 of the Oklahoma Constitution, and enjoin Defendants from continuing to utilize such practices and/or procedures pursuant to Okla. Stat. tit. 12, §§1381 *et seq.*;

7. Issue a declaration, pursuant to Okla. Stat. tit. 12, §1651, that Defendants' disparate treatment of Plaintiffs' May 1, May 5, and September 4 ORA requests violates Article II, § 22 of the Oklahoma Constitution, and enjoin Defendants from further such violations pursuant to Okla. Stat. tit. 12, §§1381 *et seq.*;

8. Issue a declaration, pursuant to Okla. Stat. tit. 12, §1651, that Defendants' disparate treatment of requests for access to public records made by members of the press are in violation of Article II, Section 22 of the Oklahoma Constitution, and enjoin them from further such violations pursuant to Okla. Stat. tit. 12, §§1381 *et seq.*;


9. Issue an alternative Writ of Mandamus to command Defendants to produce to Plaintiffs all of the specific records requested by Plaintiffs on May 1, May 5, and September 4, 2014 in their entirety by a date certain, and to henceforth comply with their obligations under the ORA and Oklahoma Constitution to, *inter alia*, provide prompt, reasonable access to their

records to members of the press and the public, or to appear and show cause why they should not be commanded to do so; and

10. Award Plaintiffs reasonable attorney fees and costs as provided under the ORA, together with such further relief as may be just and proper.

Dated: May 2, 2016

Respectfully submitted,

By:   
Robert D. Nelon, OBA #6610  
Hall Estill Hardwick Gable Golden &  
Nelson  
Chase Tower, Suite 2900  
100 N. Broadway  
Oklahoma City, OK 73102  
405.553.2805 (Telephone)  
405.553.2855 (Facsimile)  
bnelon@hallestill.com

Katie Townsend (*Pro Hac Vice*)  
The Reporters Committee for Freedom of  
the Press  
1156 15th St. NW  
Washington, DC 20005  
202.795.9300 (Telephone)  
202.795.9310 (Facsimile)  
ktownsend@rcfp.org  
*Counsel for Plaintiffs*

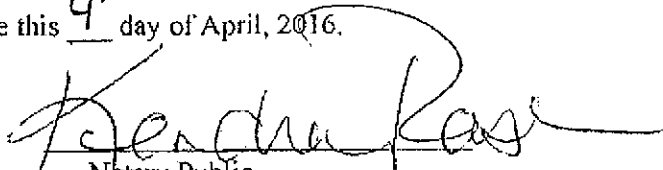
VERIFICATION

STATE OF OKLAHOMA       )  
                                      )  
COUNTY OF OKLAHOMA    )       ss:

I, Ziva Branstetter, being of lawful age and being first duly sworn upon oath, deposes and states that I have read the above and foregoing First Amendment Petition, am familiar with the contents thereof, and that the facts therein set forth are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Ziva Branstetter

Subscribed and sworn to before me this 4<sup>th</sup> day of April, 2016.

  
\_\_\_\_\_  
Notary Public

Commission Number \_\_\_\_\_



**CERTIFICATE OF SERVICE**

This is to certify that on May 2, 2016 a true and correct copy of the foregoing instrument was transmitted electronically and mailed, postage prepaid, to the following counsel of record:

Jennifer E. Chance, OBA #19320 Deputy General Counsel Office of the Governor Mary Fallin 2300 N. Lincoln Blvd., Room 212 Oklahoma City, OK 73105	Steven J. Krise, OBA #17948 General Counsel Kim M. Rytter, OBA #20825 Assistant General Counsel Department of Public Safety 3600 Martin Luther King Ave. Oklahoma City, OK 73111
--	--



Robert D. Nelon

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**IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA**

**ZIVA BRANSTETTER and BH Media  
Group Inc. d/b/a *TULSA WORLD*,**

**Plaintiffs,**

**v.**

**MARY FALLIN, in her official capacity as  
GOVERNOR OF THE STATE OF  
OKLAHOMA; MICHAEL C. THOMPSON,  
in his official capacity as COMMISSIONER  
OF THE OKLAHOMA DEPARTMENT  
OF PUBLIC SAFETY,**

**Defendants.**

**Case No. CV-14-2372  
Judge Bryan Dixon**

**AFFIDAVIT OF ZIVA BRANSTETTER IN SUPPORT OF PLAINTIFFS' REQUEST  
FOR A WRIT OF MANDAMUS**

---

I, Ziva Branstetter, being first duly sworn, upon oath, deposes and says as follows:

1. I am the Editor-in-Chief and a staff writer for *The Frontier*, and am a plaintiff in the above-captioned case. I am a former reporter and Enterprise Editor for *Tulsa World*, the daily newspaper for the city of Tulsa, Oklahoma. Before joining *The Frontier*, I worked at *Tulsa World* for 21 years. I cover a variety of state government issues, including prisons, the criminal justice system, state oversight of healthcare facilities, and issues surrounding government transparency.

2. I make frequent use of the Oklahoma Open Records Act, Okla. Stat. tit. 51, §§ 24A.1, *et seq.* ("ORA") to gather information for my reporting.

3. As a reporter for *Tulsa World*, I have spent considerable time covering executions carried out by the State, including the executions of Clayton Lockett and Charles Warner.

4. On or about May 1, 2014, I, in my role as a reporter and Enterprise Editor for *Tulsa World*, sent the Office of Governor Fallin an ORA request for “[a]ll records, including emails, associated with the execution of Clayton Lockett and Charles Warner dating from March 1 to the present.” In the request, I “agree[d] to limit [my] request to emails (whether on a personal email account or state email account) to email communications between the governor’s office and DOC Director Robert Patton, Jerry Massie or Anita Trammell; DPS Commissioner Michael Thompson; the governor’s legal staff including Steve Mullins; Denise Northrup; Attorney General Scott Pruitt or Melissa McLawhorn Houston (or assistants acting on their behalf) and of course any emails from the governor herself,” as well as “any communications between the governor’s office and the state Supreme Court justices or staff acting on their behalf.” A true and correct copy of the May 1, 2014 Open Records Act request is attached to the Amended Petition as **Exhibit A**.

5. On or about May 2, 2014, the Office of Governor Fallin responded via email to the May 1 Open Records Act request. In that response, a true and correct copy of which is attached to the Amended Petition as **Exhibit B**, the Office of the Governor stated that the request had been “placed [] in the queue of Open Record Requests” and assigned the number 2014-016.

6. The the above-captioned lawsuit was filed on December 22, 2014, more than seven months after I submitted the May 1 ORA request. As of the filing of the above-captioned lawsuit, the Office of the Governor had not released a single document in response to the May 1 ORA request.

7. On or about October 8, 2015, approximately seventeen months after the May 1 ORA request was submitted, the Office of the Governor released approximately 41,697 pages of records, many in heavily redacted form, purportedly in response to the May 1 ORA request.



8. I have reviewed the records that were provided by the Office of the Governor on or about October 8, 2015.

9. The records released by the Office of the Governor on October 8, 2015 include a significant number of records that are not responsive to the May 1 ORA request.

10. The Office of the Governor has also withheld and continues to withhold portions of a number of records that it released, in part, on October 8, 2015. Specifically, the records released by the Governor's Office on October 8, 2015 contain a number of redacted records, as well as at least seventeen (17) pages of records with encrypted content.

11. The Office of the Governor has also withheld and continues to withhold certain records in their entirety that it has identified as responsive to the May 1 ORA request. Based on the cover letter provided with the documents, it appears that the Office of the Governor is withholding at least 39 records consisting of 54 pages of material that it has identified as responsive to the May 1 ORA request.

12. On or about May 5, 2014, I, in my role as a reporter and Enterprise Editor for *Tulsa World*, sent DPS a written request for specified public records under the Oklahoma Open Records Act. Specifically, in an email to Cpt. George Brown, head of DPS public affairs, I requested "all email to or from Commissioner Michael Thompson and Steve Krisc or assistants acting on their behalf—regardless of who sent or received these emails—regarding the execution of Clayton Lockett and Charles Warner and any related policy issues since April 1." A true and correct copy of that request is attached to the Amended Petition as **Exhibit C**.

13. Brown confirmed receipt of that May 5 Open Records Act request in an email to me dated on or about May 7, 2014, in which he stated that he was "waiting to hear back regarding [my] email request."

14. On or about August 12, 2014, I received an email from Brown on behalf of the DPS stating, among other things, that the DPS's Legal Division was "conducting a review to determine which [email responsive to my May 5 Open Records Request], if any, may contain privileged or confidential information that is not subject to an open record request." Brown estimated that review would "take up to another three months" to complete. A true and correct copy of that August 12 email is attached to the Amended Petition as **Exhibit D**.

15. On or about September 4, 2014, I, in my role as a reporter and Enterprise Editor for *Tulsa World*, submitted another written request to DPS for specified public records under the Oklahoma Open Records Act. Specifically, in an email to Brown, I requested "copies of all full statements by the official media witnesses to the Lockett execution as well as statements by any public official who witnessed the execution, including Commissioner Michael Thompson," and "copies of statements by the paramedic and physician attending the execution." A true and correct copy of my September 4 Open Records Act request is attached to the Amended Petition as **Exhibit E**.

16. That same day, I received a response, via email, from Brown stating that he had "received [my] official open records request dated 9/4/14 and will review it for consideration and processing." A true and correct copy of DPS's response to my September 4 Open Records Act request is attached to the Amended Petition as **Exhibit F**.

17. The above-captioned lawsuit was filed on December 22, 2014, more than three months after I submitted the September 4 ORA request. As of the filing of the above-captioned lawsuit, DPS had not released a single document in response to the September 4 ORA request.

18. More than two months after the filing of the above-captioned lawsuit, on or about March 13, 2015, DPS released approximately 5,274 pages of records, many in heavily redacted form.

19. Approximately nine months after the September 4 ORA request was submitted to DPS, on or about June 9, 2015, DPS released another approximately 5,017 pages of records, many in heavily redacted form.

20. I have reviewed the records provided by DPS on or about March 13 and June 9, 2015.

21. The records released by DPS on March 13, 2015 were responsive to the September 4 ORA request. DPS's March 13, 2015 production did not include any records released in response to the May 5 ORA request.

22. The records released by DPS on June 9, 2015 were also responsive to the September 4 ORA request. DPS's June 9, 2015 production did not include any records released in response to the May 5 ORA request.

23. As of the filing of this Amended Petition, DPS has not released a single record in response to the May 5 ORA request.

24. DPS has withheld and continues to withhold portions of a number of records that it released, in part, on March 13 and June 9, 2015 in response to the September 4 ORA request. Specifically, the records released by DPS contain a number of redacted records.

FURTHER AFFIANT SAITH NOT.

---

Ziva Branstetter

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of April, 2016, by \_\_\_\_\_

23. As of the filing of this Amended Petition, DPS has not released a single record in response to the May 5 ORA request.

24. DPS has withheld and continues to withhold portions of a number of records that it released, in part, on March 13 and June 9, 2015 in response to the September 4 ORA request. Specifically, the records released by DPS contain a number of redacted records.

FURTHER AFFIANT SAITH NOT.

*Ziva Branstetter*

Ziva Branstetter

SUBSCRIBED AND SWORN to before me this 4<sup>th</sup> day of April, 2016, by *Kendra Rash*



# EXHIBIT A

Subject: records request  
From: "Branstetter, Ziva" <Ziva.Branstetter@tulsaworld.com>  
Date: 5/1/2014 6:39 PM  
To: Alex Weintz <Alex.Weintz@gov.ok.gov>

Alex: Please consider this a request under the Oklahoma Open Records Act for the following:

All records, including emails, associated with the execution of Clayton Lockett and Charles Warner dating from March 1 to the present:

I agree to limit my request to emails (whether on a personal email account or state email account) to email communications between the governor's office and DOC Director Robert Patton, Jerry Massie or Anita Trammell; DPS Commissioner Michael Thompson; the governor's legal staff including Steve Mullins; Denise Northrup; Attorney General Scott Pruitt or Melissa McLawhorn Houston (or assistants acting on their behalf) and of course any emails from the governor herself. I also request any communications between the governor's office and the state Supreme Court justices or staff acting on their behalf. Please make sure to include any attachments to the email that are responsive to this request.

Ziva Branstetter  
Tulsa World Enterprise Editor  
918.581.8306 (O) 918.520.0406  
@zivabranstetter

# EXHIBIT B

From: Audrey Rockwell [mailto:~~AUDREY.ROCKWELL@GALILEO.IL.GOV~~]

Sent: Friday, May 02, 2014 5:22 PM

To: Branstetter, Ziva

Subject: Acknowledgement of Open Records Request

The office of Governor Mary Fallin has received your Open Records Request and placed it in the queue of Open Record Requests. Your request number is 2014-016. I have attached a copy of your request below please let me know if that is not a correct copy of your request.

Governor Mary Fallin and staff emails re: Execution of Clayton Lockett and Charles Warner from March 1, 2014 to May 1, 2014.



# EXHIBIT C

From: "Branstetter, Ziva" [Ziva.Branstetter@tulsa-world.com]  
Sent: 05/05/2014 07:49 AM  
To: George Brown <George.Brown@state.ok.us>  
Cc: "Strain, Mike (Michael)" <Mike.Strain@tulsa-world.com>; "Worley, Joe (Joseph)" <Joe.Worley@tulsa-world.com>; "Ellerbach, Susan" <Susan.Ellerbach@tulsa-world.com>  
Subject: Information request

Good morning George: We had talked a few days ago about the investigation into the execution. You were going to find out for me whether troop Z has anyone with medical training related to IV placement, drug interaction and related issues that will -- I assume -- be part of the investigation. I also request to know whether any outside agencies or experts will be included in this investigation and if so which ones, who they are.

Finally, please consider this a records request for all email to or from Commissioner Michael Thompson and Steve Krise or assistants acting on their behalf -- regardless of who sent or received these emails -- regarding the execution of Clayton Lockett and Charles Warner and any related policy issues since April 1.

Please be aware of the ORA's requirement that open records be provided in a prompt and reasonable time frame and that records cannot be withheld due to an ongoing investigation. If any emails contain exempt material please cite the applicable statute, redact the exempt portion of the record and provide the remainder of the record as required by the ORA.

Ziva Branstetter  
Enterprise Editor  
Tulsa World  
918-581-8386 (o)  
918-528-0486 (c)  
@zivabranstetter

# EXHIBIT D

From: George Brown [mailto:George.Brown@state.ok.us]

Sent: Tuesday, August 12, 2014 12:21 PM

To: Branstetter, Ziva

Subject: Re: Status of records request?

Ziva,

We are working to provide an update to our investigation of the execution of convicted murderer Clayton Lockett, and hope to release that update sometime this week. As the autopsy is a key component of our investigation, we can't move forward until it is released. We have completed all interviews, well over 100, and are in the final stages of our investigation. We look forward to releasing the report as soon as possible.

In response to your May 5th records request for email correspondence:

Section 24A.2 of the ORA states in part, "the agency to whom a request is made shall at all times bear the burden of establishing whether any records are protected by a confidential privilege". Therefore, our legal division is conducting a review to determine which ones, if any, may contain privileged or confidential information that is not subject to an open record request. This is a comprehensive review process which requires extended time.

Please note the ORA also states, "public bodies do not need to follow any procedures for providing access to public records except those specifically required by the Oklahoma Open Records Act".

The ORA allows an agency a reasonable time to respond and given the sheer size of the request, the slow process of reviewing each individual record, and the limited number of attorneys who are available to conduct a legal review, we believe we are on track. A fair estimation, assuming nothing interferes before then, is that it will take up to another three months before completion.

If you have any questions please feel free to contact me.

Respectfully,

Captain George Brown #47

Commander, DPS Public Affairs

405-425-7709

# EXHIBIT E

From: "Branstetter, Ziva" [mailto:[Ziva.Branstetter@Pulsaworld.com](mailto:Ziva.Branstetter@Pulsaworld.com)]  
Sent: 09/04/2014 02:33 PM  
To: George Brown <[George.Brown@ok.az.us](mailto:George.Brown@ok.az.us)>  
Cc: "Strain, Mike (Michael)" <[Mike.Strain@Pulsaworld.com](mailto:Mike.Strain@Pulsaworld.com)>; "Worley, Joe (Joseph)" <[Joe.Worley@Pulsaworld.com](mailto:Joe.Worley@Pulsaworld.com)>; "Ellenbach, Susan" <[Susan.Ellenbach@Pulsaworld.com](mailto:Susan.Ellenbach@Pulsaworld.com)>  
Subject: Records request

George: Please consider this a request under the Open Records Act for copies of all full statements by the official media witnesses to the Lockett execution as well as statements by any public official who witnessed the execution, including Commissioner Michael Thompson.

Additionally, I request copies of statements by the paramedic and physician attending the execution. Please redact any identifying information including name, office locations etc. The ORA provides for redaction of exempt material from public records while requiring that the remaining document be provided.

I understand that there are transcripts of the statements but if transcripts do not exist I request the audiotapes of said interviews.

In the same spirit of transparency that DPS has pledged and displayed throughout this investigation, I believe release of full statements would enable the public to determine on its own what the witnesses said and how their views differed.

If any part of this request is denied, we request a written denial citing the reasons.

Thank you for your assistance with our request. Please let me know if you have any questions.

Ziva Branstetter  
Enterprise Editor  
Pulsa World  
918-581-8386 (o)  
918-520-0406 (c)  
[@zivabranstetter](mailto:zivabranstetter)

# EXHIBIT F

Subject: Re: Records request

From: <GBrown@dps.state.ok.us>

Date: 9/4/2014 3:40 PM

To: Ziva Branstetter <ziva.branstetter@tulsaworld.com>

CC: <PIO@dps.state.ok.us>

Mrs. Branstetter,

I have received your official open records request dated 9/4/14 and will review it for consideration and processing.

CPT George Brown #47

Commander, OHP/DRS Public Affairs



# EXHIBIT G

Subject: Redacted Lockett interview transcripts

From: <Ziva.Branstetter@tulsaworld.com>

Date: 11/17/2014 8:24 AM

To: George Brown <Gbrown@dps.state.ok.us>

CC: Susan Ellerbach <Susan.Ellerbach@tulsaworld.com>, Mike Strain <Mike.Strain@tulsaworld.com>

George: Are you all going to be releasing the redacted interview transcripts today? I request copies of all transcripts created in connection with the Clayton Lockett investigation in electronic format under the Open Records Act. I know Judge Friot ordered DPS to produce them by Nov. 15 and they're already redacted.

Please inform me if the documents are not in electronic format and if I need to do anything else to obtain them.

Ziva Branstetter  
Enterprise Editor  
Tulsa World  
918-581-8305 (o)  
918-520-0406 (c)  
@zivabranstetter

# EXHIBIT H

**From:** Rebecca Frazier  
**To:** Audrey Rockwell; Alex Weintz  
**Cc:** Steve Mullins  
**Subject:** RE: Records request  
**Date:** Thursday, February 14, 2013 1:53:00 PM  
**Attachments:** Response to ORR.docx

---

My changes to the letter. I think it looks good.

---

**From:** Audrey Rockwell  
**Sent:** Thursday, February 14, 2013 1:25 PM  
**To:** Rebecca Frazier; Alex Weintz  
**Cc:** Steve Mullins  
**Subject:** RE: Records request

Please review. Thanks.

---

**From:** Rebecca Frazier  
**Sent:** Thursday, February 14, 2013 12:42 PM  
**To:** Alex Weintz; Audrey Rockwell  
**Cc:** Steve Mullins  
**Subject:** RE: Records request

Ok. The TW request is pretty old. Audrey can pull the date.

---

**From:** Alex Weintz  
**Sent:** Thursday, February 14, 2013 12:41 PM  
**To:** Rebecca Frazier; Audrey Rockwell  
**Cc:** Steve Mullins  
**Subject:** RE: Records request

My inclination would be to send them to both as quickly as possible

Alex Weintz  
Communications Director  
Office of Governor Mary Fallin  
phone: (405) 522-8819  
cell: (405) 535-7317  
[Alex.Weintz@gov.ok.gov](mailto:Alex.Weintz@gov.ok.gov)

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**From:** Rebecca Frazier  
**Sent:** Thursday, February 14, 2013 12:40 PM  
**To:** Alex Weintz; Audrey Rockwell  
**Cc:** Steve Mullins  
**Subject:** RE: Records request

We can get it to him; however, just fyi... we have a similar request pending from the Tulsa World that we have not responded to yet (because we put it in the "que").

---

**From:** Alex Weintz  
**Sent:** Thursday, February 14, 2013 12:39 PM  
**To:** Audrey Rockwell  
**Cc:** Rebecca Frazier; Steve Mullins  
**Subject:** FW: Records request

This is an open records request asking for all our health care open records requests. If possible it'd be great to just get the docs back to him quickly so we can be as responsive as possible

Alex Weintz  
Communications Director  
Office of Governor Mary Fallin  
phone: (405) 522-8819  
cell: (405) 535-7317  
[Alex.Weintz@gov.ok.gov](mailto:Alex.Weintz@gov.ok.gov)

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**From:** [dfritze@oklahomawatch.org](mailto:dfritze@oklahomawatch.org) [mailto:[dfritze@oklahomawatch.org](mailto:dfritze@oklahomawatch.org)]  
**Sent:** Wednesday, February 13, 2013 4:10 PM  
**To:** Alex Weintz  
**Subject:** Records request

Alex:

This is to request, under Oklahoma's Open Records Act, a copy of all Open Records Act

requests made in 2012 by news media, advocacy or other groups seeking emails sent to and/or from the governor's office related to health care, Obamacare (Affordable Care Act), the health-care exchange and/or Medicaid expansion.

I'm anticipating that these documents will not number more than a dozen or so, involving several organizations, mainly or entirely news media.

I'm requesting that these records be provided by Friday, Feb. 22, if not sooner, given the small number of pages. I would prefer they be sent as PDFs, but let me know if they would be in a different format.

Sincerely,

David Fritze  
Executive Editor  
Oklahoma Watch  
O: (405) 325-3529  
M: (405) 902-6565

# EXHIBIT I

From: Alex Weintz  
To: Alex Gerszewski  
Subject: Re: Today's Tulsa World Articles  
Date: Tuesday, June 24, 2014 10:09:17 AM  
Attachments: image004.png  
image005.png

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Thx

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From: Alex Gerszewski  
Sent: Tuesday, June 24, 2014 10:07 AM  
To: Mary Fallin <[REDACTED]>  
Cc: Alex Weintz  
Subject: Today's Tulsa World Articles

Governor,

Below are today's Tulsa World articles. I will send the articles from the weekend and Monday in a separate email.

-

## State fails to autopsy most inmates

Editor's Note

Editor's Note: This story is the third in a three-part series examining problems with Oklahoma's lethal injection process.

The state has conducted autopsies on less than half of the inmates executed in Oklahoma since 1990 and, in many cases, does not perform tests that could show whether inmates were awake and paralyzed as painful drugs flowed into their veins, a Tulsa World investigation has found.

Because state records are inconsistent and blood is sometimes drawn long after inmates die, it is difficult to say how many inmates were conscious when they received potassium chloride, the third drug in Oklahoma's lethal injection process. Medical experts, judges and attorneys for the state agree that potassium chloride is excruciatingly painful if given to a conscious person.

The botched execution of Clayton Lockett on April 29 has sparked a nationwide discussion about the death penalty and new scrutiny in how Oklahoma and other states put people to death.

The World created a database using 109 medical examiner's reports from Oklahoma inmates executed since 1990, including the levels of anesthetic in their blood following death where available. Experts in anesthesiology and clinical pharmacology reviewed the data to spot issues and problem cases.

Among the World's findings:

The Oklahoma State Medical Examiner's office conducted full autopsies on all executed