

May 2

Ziva:

As per your request regarding the Bradshaw case, Jail surveillance video is not subject to open record requests per Oklahoma State Statutes title 51 section 24A8.

Casey

Casey:

We will be posting a story about this new stance sometime in the next day. We have comment from Nathan Bradshaw's attorney so we would like comment from the sheriff. He pointed out that the jail is the property of the TCCJA. Wouldn't they be the custodian of the videos?

Ziva Branstetter

Editor in chief

The Frontier

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Readfrontier.com

May 25

I am requesting all video of Mr. Fulps at the time of his injuries. The incidents were on April 9, when he allegedly fell off a bunk, and on April 29, when he allegedly fell down the stairs. I would like to interview the sheriff about this case.

One of the issues: He was transported to the hospital with a broken neck in a patrol car.

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Regarding your request for video, cameras inside the jail are not subject to open records. So we will not be providing those. I've passed your interview request on to the sheriff.

Casey

What exemption again are you relying on to withhold the jail videos? This is a policy change from previous administrations. Did Sheriff Regalado approve a policy change?

Ziva

Casey: Have you all reviewed the legal ruling in the case involving the Owasso police officer? That was video inside the jail.

Casey: Please see the portions where the ORA requires records to be released that deal with "facts concerning the arrest." There is case law on this and legal rulings that law enforcement videos depict facts concerning the arrest.

Additionally, there is new language in the ORA requiring law enforcement agencies to release videos of "events that directly led to any person being arrested, cited, charged or receiving a written warning," Mr. Fulps was charged in both instances as a result of the alleged conduct that occurred on these dates. Please cite the exemption that TCSO is relying on to withhold all jail videos. Videos certainly are a form of a record and depict facts concerning arrests.

May 26

Meredith / Casey:

Please consider this a request for the following:

1. All video of David Lee Fulps II that depicts facts concerning an arrest for assault and battery of a detention officer committed on April 9 and April 29 inside the Tulsa Jail. That includes all events leading up to the incident in question.

2. All reports, including medical reports, incident reports and law enforcement reports, regarding the arrest and detention of David Lee Fulps II. These records should include but not be limited to reports describing how Fulps sustained any injuries in the jail and his transport(s) for treatment as well as any grievances or kiosk requests.

3. Any written policies dealing with release of videos from jail cameras.

4. The contract between TCSO and any entity for release of video from jail cameras, including but not limited to video for the show "Lockup Tulsa."

5. All emails related to the arrest, detention and injury of David Lee Fulps.

A video is a record.

According to the Open Records Act, a "record" is defined as: "[A]ll documents, including, but not limited to, any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, and record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property."

The jail also claims it is a law enforcement agency. I question whether that claim is accurate.

The Open Records Act defines law enforcement agency as "any public body charged with enforcing state or local criminal laws **and initiating criminal prosecutions**, including, but not limited to, police departments, county sheriffs, the Department of Public Safety, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic Beverage Laws Enforcement Commission, and the Oklahoma State Bureau of Investigation."

Because the Tulsa County Criminal Justice Authority actually owns the jail, it seems like that agency is the proper custodian of these videos and, as such, is not a law enforcement agency. Additionally, detention officers are not "charged with enforcing state or local criminal laws and initiating criminal prosecutions." When incidents occur at the jail, it's my understanding that the investigative arm of the sheriff's office takes the report and initiates a prosecution.

Assuming the jail is found by a court to be a law enforcement agency, it is required to make records available that show "facts concerning an arrest."

The state Supreme Court ruled in 2004 that videos of DPS implied consent hearings were public records because they were “facts concerning an arrest.

<http://www.oscn.net/applications/oscn/deliverdocument.asp?id=439887&hits=5886+5885+5884+2402+2401+2400+>

In 2014, the Civil Appeals Court ruled in Ward & Lee vs. City of Claremore that dashcam videos of a DUI arrest made by Claremore police were open records. The court ruled that the videos depicted facts concerning an arrest including the cause of the arrest.

<http://www.oscn.net/applications/oscn/deliverdocument.asp?citeid=439887>

Additionally, the Open Records Act has been amended to include requirements for law enforcement agencies to provide dash cam and lapel cam videos. While lawmakers did not add “and stationary cameras” the clear intent of this law is to cover such videos as well. The Tulsa County Sheriff’s Office is not abiding by the spirit or letter of the Open Records Act.

With Fulps’ add-on charges, even though they occurred in the jail, the TRACIS reports list the incident date as “date of arrest” and “location of arrest” as the jail. So these videos clearly depict facts concerning an arrest, which two courts have already ruled are considered public records.

Additionally, the ORA says If the records have previously been made available, the law shouldn’t be used to deny future requests:

“Except for the records listed in subsection A of this section and those made open by other state or local laws, law enforcement agencies may deny access to law enforcement records except where a court finds that the public interest or the interest of an individual outweighs the reason for denial. The provisions of this section shall not operate to deny access to law enforcement records if such records have been previously made available to the public as provided in the Oklahoma Open Records Act or as otherwise provided by law.”

Videos taken in the jail are already made public every day when prisoners are arraigned via video from the jail.

TCSO also agreed to release jail videos to NBC’s “Lockup Tulsa” show in 2013, including a video showing a group of inmates beating another

inmate.<http://www.nbcnews.com/video/lockup/53217889>

In 2013, the sheriff’s office released video taken inside the jail of a teen-age murder defendant shot during a video phone call.

http://www.tulsaworld.com/news/crimewatch/jail-video-shows-teenage-murder-defendant-joking-about-gun-to/article_272c086e-3b98-11e3-9d25-0019bb30f31a.html

Additionally, I requested and received video from the sheriff's office of former TPD Officer Bill Yelton visiting an officer in jail who was charged as part of the police corruption scandal. The Tulsa World wrote about and posted that video in a news story.

TCSO has acknowledged that videos shot by its deputies in the field are public records. How are videos shot in the jail any different? Please cite a specific exemption in the ORA that TCSO is relying on to withhold these videos. Simply saying they are not open records is not sufficient. And I would imagine such an important policy change has been approved in writing, Please provide a copy of all records related to the policy change.

Sincerely,

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Good morning Ziva,

The TCSO is in receipt of your request and will process it accordingly. Right off hand however, the TCSO will not produce medical records of individual inmates. The TCSO is not the custodian of medical records and such records are not subject to production under the ORA, as they are considered protected, confidential records. (Health Insurance Portability and Accountability Act of 1996, 45 C.F.R 160) As you noted, the Tulsa County Criminal Justice Authority does own the jail. So we are happy to forward your request to them. As you noted, they may very well be considered the custodians of the records and as such, your request may be more appropriately referred to them.

We will touch base with you when those records subject to production under the ORA are ready to be picked up.

Thank you and have a good day.

Casey

Thank you. If the TCCJA is the custodian of medical records, then they are also the custodian of the videos and TCSO is not in a position to deny them.

Ziva

Casey:

We are about to post a story about this so I am reiterating my request to interview Sheriff Regalado. Surely he has five minutes to talk about why what he told the TCCJA does not appear to match the records I have. I am sure there is an explanation. From the records I have, it looks like Fulps had a broken neck, pelvis and spine for several days at the jail before being taken to the hospital in a patrol car. **I want this story to have all sides in it but this does not line up with his claim that Fulps received appropriate medical care.**

Ziva

June 1

Good morning Casey ... I have a couple of records we are needing to get.

1. Please provide all records related to any personnel actions taken resulting in loss of pay, suspension, demotion or termination of any TCSO employee under Sheriff Regalado.
2. Please provide records indicating the findings / outcome of investigations related to Nathan Bradshaw's attempted suicide and any previous reports that Bradshaw was mentally ill or suicidal.
3. Please provide all records of payments for the defense of Robert Bates, including payments for specialists and experts to testify and payments to attorneys. Please include copies of billings from Brewster and DeAngelis for Bates' defense.

We are in receipt of your request and will send any open records responsive to you request.

Casey

June 6

Hi Casey ... I need to get a copy of a letter that I understand a doctor wrote to someone at TCSO -- possibly the sheriff or chief deputy over the jail -- saying that David Fulps needed to be transported to the hospital immediately due to his condition. It's my understanding that such a letter exists.

Also, it is my understanding that when OSU Medical Center said it could not treat Mr. Fulps' injuries, TCSO wanted to transport him to St. John in a patrol car and a discussion or argument occurred over this with officials at OSU Medical Center. Eventually he was transported in an ambulance to St. John. I request any reports, radio logs, emails or other documents reflecting this discussion about transportation to St. John.

You should also have my earlier requests for other reports on his case as well as video. Please let me know when I can expect these records. Thanks!

Hello Ziva,

As per your request today, no records responsive.

In responsive to your request from Wednesday, those records are still under review. I will let you just as soon as they are ready.

Have a great day!

Casey

Hi Ziva,

Just wanted send you a quick update now that I've had a chance to look into it... The Nathan Bradshaw investigation is still open. We can process ORA's regarding that investigation once it's complete.

Thanks

Casey

June 8

Thanks Casey. Please provide statutory authority for withholding records that are open under the law while an investigation is going on. If that were the case, everyone in the jail would be a secret. Not trying to be flippant, but the law specifically says public records cannot be placed in an investigation file and denied.

I realize law enforcement agencies only have to give the eight enumerated items under 24A.8 and then there are other things (like jail videos) that are clearly open under case law. So those records are open records regardless of an ongoing investigation. That's all I'm asking TCSO to do.

Ziva

Casey:

Here's a link to that section of the law ,..

<http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=80308>