



FILED IN DISTRICT COURT
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FEB 16 2017

RICK WARREN
COURT CLERK

34 _____

CENTER FOR MEDIA AND DEMOCRACY,
a Wisconsin corporation,

Plaintiff,

v.

SCOTT PRUITT, in his official capacity as
ATTORNEY GENERAL OF THE STATE OF
OKLAHOMA,

Defendant.

Case No: CV-17-223

Judge Aletia Timmons

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S STATUS REPORT TO THE COURT**

COMES NOW Oklahoma Attorney General Scott Pruitt, in his official capacity as Attorney General of the State of Oklahoma (hereinafter "OAG" or "State"), by and through attorneys of record, Jeb Joseph, Charles A. Dickson, III and Kindanne C. Jones, Assistant Attorneys General, and hereby responds to "Plaintiff's Status Report to the Court," filed herein on February 14, 2017.

INTRODUCTION

Plaintiff is a foreign corporation with an apparent political axe to grind, and it wants the taxpayers of the State of Oklahoma to bear the cost of that politically-motivated quest. This Court should decline Plaintiff's invitation to take part in this hijacking and misuse of Oklahoma resources, and allow the litigation of this case to proceed in a fashion consistent with the Oklahoma Rules of Civil Procedure, Local Court Rules, and applicable Oklahoma law.

I. BACKGROUND

The State of Oklahoma, through its officials, receives many requests for records under the Oklahoma Open Records Act (“ORA”), 51 OKLA. STAT. tit. §§ 24A.1 - 24A.30. As of the end of November 2016, the OAG had thirty-two (32) pending Open Records requests in its queue. With the President’s announcement of the nomination of Attorney General Pruitt to Federal service, there was a spike in ORA requests submitted to the OAG. By the end of December 2016, the number of outstanding requests was seventy-two (72), and by January 2017, the OAG had over one-hundred and two (102) such requests pending. Some of those pending requests were submitted by Plaintiff’s agents before the Attorney General’s nomination, and some were submitted after.

Five days before Plaintiff filed this lawsuit, the OAG General Counsel, Ms. Sarah Greenwalt, contacted Plaintiff’s agent, Ms. Jamie Corey, via e-mail to notify her that final review of her request would begin the next day. Ms. Greenwalt attempted to follow up with Ms. Corey through a phone call; however, Ms. Corey neither accepted the call nor called her back. Rather, Plaintiff filed its lawsuit. Within days after the filing, the OAG responded to Plaintiff’s January 2015 request. And, the OAG has continued to methodically move through the queue of pending Open Records Act requests.

II. THE ORDER OF FEBRUARY 15, 2017

In addition to the OAG’s normal records request review and processing practices being followed in an ongoing fashion, the Attorney General’s Office (through its litigation counsel) has also engaged in a good faith effort with Plaintiff’s counsel to craft

an agreed order which accurately reflected the Court's and Parties' understandings that the Office shall continue to follow relevant state law, records disposition schedules, and OAG practices in maintaining records responsive to Plaintiff's Open Records Act requests. After the hearing on February 7, 2017, it appeared that progress was being made by Plaintiff's and Defendant's counsel on the draft order, until Plaintiff attempted to change things that had already passed a first review with approval from Plaintiff's counsel's office.

Beginning in the afternoon of Wednesday, February 8, 2017, Plaintiff's counsel and OAG counsel began working together on an order to be proposed to the Court regarding the content of a hearing held on February 7, 2017. During that hearing, the Court encouraged Parties to come up with some kind of order which would recognize the state records disposition schedules and the OAG's ongoing compliance with its preservation duties, and would provide for the continuing preservation of records already identified as responsive to Plaintiff's ORA requests. That Order-drafting effort began the next day as a joint effort between counsel for the OAG and Plaintiff. Unfortunately, after sending an initial draft, the attorney who appeared for Plaintiff at the hearing on February 7, 2017 had to go out of town. But OAG counsel continued its work with the designated associate in Plaintiff's counsel's office. That associate attorney had not actually attended the hearing on February 7, 2017. This apparently led to some delay and miscommunication within Plaintiff's counsel's own office. However, upon Plaintiff's lead counsel's return to the office on Monday, February 13, 2017, the mutual editing of the

draft order resumed with more focus, and the Parties were able to agree on a draft order. That proposed order was signed by counsel for both parties and submitted to the Court for approval and filing on Wednesday, February 15, 2017.

Although the Court apparently made one (1) redaction and revision in chambers to the agreed Order, (while Plaintiff's counsel was present but OAG's counsel was not present), the Order was filed on February 15, 2017. Therefore, despite the last minute revision to the Order by the Court (made without OAG counsel's knowledge), the Order confirming preservation of responsive documents is in place and on file with the Court Clerk. Further, because that Order has already been reached regarding maintenance and preservation of documents, the Attorney General's office submits that any further discussion of an injunction as to document preservation is superfluous and wholly misplaced.

III. PLAINTIFF'S GRATUITOUS STATUS REPORT TO THE COURT

On February 14, 2017, Plaintiff gratuitously filed its "Plaintiff's Status Report to the Court," (hereinafter "Report"). That document is five (5) pages long, but includes over ninety (90) pages worth of exhibits. In the "Facts" section of the Report Plaintiff offers a somewhat distorted presentation of the proceedings held on February 7, 2017. The clear text of the transcript of that event provides a more reliable account of what actually occurred. Contrary to the Report's incomplete and misleading representations, the Parties have indeed reached an agreement on the language of an Order reflecting the proceedings

held on February 7, 2017. (*See Correspondence between counsel, as well as the discussion in Section II, supra.*, attached as Exhibit 1).

The Report also omits or misconstrues several other key facts. First, contrary to paragraph 2 of the Report, Ms. Greenwalt of the OAG did not contact CMD directly. Instead, given that litigation had been initiated by Plaintiff, and that Plaintiff is indeed represented by counsel, Ms. Greenwalt's letter was sent to CMD via counsel of record. Also, contrary to the Report's insinuations in paragraph 4, the number of documents which might be collected in an initial, basic search will not always be relevant to the search parameters or focus and may not, therefore, actually reflect the number of truly responsive documents. Until a human reviewer then sits down with the documents to actually review them for substance and meaning, it is impossible to know how many documents are truly responsive. See discussion of data retrieval below. Further, Plaintiff's Report charges, without factual or legal basis, that the ORA imposes a requirement on a state entity to provide explanations of any exemptions or privileges which might reduce the number of relevant documents ultimately produced. As for the very fact-specific sorts of issues raised in paragraphs 4(b) and (c) of the Report, those are precisely the sorts of things that should be fleshed out in meaningful Discovery, and not with the shoot-from-the-hip and reckless manner urged by Plaintiff.

Finally, the Report's "Request for Relief at February 16, 2017 Hearing" is premature and wholly misplaced for no less than three significant reasons.

First, according to 12 OKLA. STAT. tit. § 2012 (A)(1)(a), a defendant in a civil action shall serve its answer to Plaintiff's Petition "within twenty (20) days after the service of the summons and petition upon the defendant," and according to the online Court docket system ("OSCN"), Plaintiff served its summons on the OAG on February 7, 2017. Thus, OAG's Answer is not due until February 27, 2017. No different time is prescribed by law. Therefore, Plaintiff's attempt to have any determination on the merits before even the filing of an Answer should be denied.

Second, Plaintiff's Report invites the Court to specifically (a) declare that OAG has violated the ORA, and (b) order immediate release of all records responsive to Plaintiff's multiple ORA requests, the most recent of which was submitted in January 2017. While scurrilously noting the possible criminal liability associated with a willful violation under the ORA in footnote 2 of the Report, Plaintiff exhorts this Court to commit reversible error and make some kind of a determination of possible criminal liability. Make no mistake, Plaintiff is arguing that this Court should disregard the United States Constitution and the rights guaranteed as they apply to all Oklahoma State officials, and simply find criminal liability based on Plaintiff's unsubstantiated and histrionic "concern." This is not the standard in Oklahoma, nor this State's courts, and it is fundamentally un-American. Plaintiff's request should be denied.

Third, Plaintiff seeks to induce the Court to impose requirements nowhere present in the law. In particular, at paragraph 4 of the Report, Plaintiff asks for an in camera review of documents which might not have been produced due to some exemption. But

the Open Records Act provides for no such review, nor does it require state entities or officials to list the reasons for not producing certain records. Plaintiff's Report does not cite to any statute or rule or regulation imposing such a duty because no such rule exists. Plaintiff's demand should be denied.

IV. FACTS AND TRIAL

Plaintiff's Petition makes a number of factual allegations, but does not provide much in terms of factual evidence, instead substituting Plaintiff's own value judgements as to purported facts. For example, in paragraph 20 of the Petition, Plaintiff claims that, "[u]pon information and belief, Pruitt employs procedures in responding to ORA requests that require unnecessary actions designed to, and with the actual effect of, severely delaying production of public records sought under the ORA." Other such disputed conclusory statements litter Plaintiff's Petition. Plaintiff asks this Court to make declaratory judgment that certain OAG policies or practices are *per se* unreasonable. Plaintiff asks the Court to order a gross production of documents regardless any consideration of privilege, confidentiality, possible sensitive investigatory material, order subject to protective orders, or the like, not to mention absent any substantive evaluation of state processes and practices. These are questions of fact. 12 OKLA. STAT. tit. § 1656 **"Declaratory Judgments - Issues of Fact,"** of the Oklahoma's Civil Procedure code states, "When a proceeding under this act involves the determination of an issue of fact, such issue must be tried and determined . . ." Discovery is necessary to find and evaluate facts, and to inform any broader determinations that may flow therefrom. Our system is a

long-lived and respected one, and it guards against the kinds of rushes to judgment advocated by Plaintiff here.

What Plaintiff either ignores or fails to understand is that the OAG is the State of Oklahoma's law firm. The OAG provides research services, advice, and counsel to the State, its agencies, and officials. The OAG provides representation to the State, its agencies, and its officials before administrative boards and courts of law in a host of subject areas. While Plaintiff blithely claims that OAG's practices are "designed" to frustrate the citizens' of Oklahoma's right to state records, that baseless assertion ignores the OAG's fundamental role as the lawyers for the State of Oklahoma, as well as the numerous privileges, confidentialities, and other considerations which any State official or agency must consider before releasing materials to requestors. For Plaintiff's edification, a sampling of such considerations is set forth below in Section V.¹

V. PLAINTIFF'S POLITICAL CIRCUS

Finally, Plaintiff is using this Court, its resources, and those of the State of Oklahoma's Attorney General's Office to orchestrate or coordinate a political circus. If there were any doubt about this fact, one only need look to (a) the "Status Report to the

¹These same issues were the subject of a hearing on Motion for Summary Judgment in the case of *A Perfect Cause 2013, INC. (d.b.a. A Perfect Cause); The Oklahoma Observer v. Mary Fallin, in her official capacity*, CV-2015-2098. In that case, which is currently pending before Judge Roger Stuart, His Honor denied Plaintiffs' Motion for Summary Judgment regarding what is 'prompt' or 'reasonable' in terms of compliance with the Open Records Act. See *Plaintiff's Motion for Summary Judgment*, attached as Exhibit 2; *Governor Fallin's Response to Plaintiff's Motion for Summary Judgment*, attached as

Court” filed by Plaintiff on February 14, 2017, coupled with (b) the letter sent via e-mail late on February 15, 2017, from United States Senators Carper, Whitehouse, Merkley, Booker, Markey, and Duckworth to the Honorable Judge Aletia Timmons seeking to have an unsworn and unverified cobbled set of documents interjected into this case’s record. Among the partisan ramblings set forth by that letter and its more-than twenty (20) pages worth of attachments is the Senators’ misplaced attempt to influence this Court by stating that if the Court will “expeditiously grant Plaintiff the full relief it seeks [it] would facilitate the performance of [the United States Senate’s] duties of advice and consent” regarding Attorney General Pruitt’s confirmation proceedings before the United States Senate’s Committee on Environment and Public Works (“EPW”). (*See Letter of February 15, 2017*, at p. 1, ¶ 1 of attachments). The letter is an attempt to influence this Court’s decision making process outside the parameters of the Oklahoma Civil Procedure Code, the Court’s Rules, the State’s rights to a full and fair litigation of the issues, and a meaningful examination of the facts demonstrating what shall be deemed ‘prompt’ and ‘reasonable’ under the Oklahoma Open Records Act. This type of shoot-from-the-hip disruption of the normal and proper course of a case’s litigation should not be rewarded.

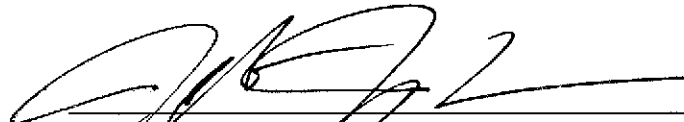
CONCLUSION

Based on the above, it is clear that any injunction (temporary or otherwise) is not necessary to preserve the documents requested by Plaintiff. Further, the Parties have

Exhibit 3; *Journal Entry regarding Motion for Summary Judgment*, attached as Exhibit 4; and *Scheduling Order in Case No. CV-2015-2098*, attached as Exhibit 5.

already agreed to and submitted an order in this regard for the Court's approval, and that Order was amended by the Court and filed. Any determinations about what is prompt or reasonable for the OAG (or indeed any state agency) in light of the Open Records Act should only take place after an Answer is filed by the OAG, and after thoughtful presentation and consideration of actual evidence by all interested parties. Finally, the Senators' insertion of allegations and roguish commentary brings heat, but not light, to the issue actually before the Court about what is 'prompt' and 'reasonable' under the Open Records Act. The Court should cut off Plaintiff's attempts at future theatrics.

Respectfully submitted,



JEB E. JOSEPH, OBA # 19137
CHARLES A. DICKSON, III, #17941
KINDANNE C. JONES, OBA# 11374
Assistant Attorneys General
Oklahoma Attorney General's Office
Litigation Division
313 NE 21st Street
Oklahoma City, Oklahoma 73105
Telephone: (405) 521-3921
Facsimile: (405) 521-4518
E-mail: jeb.joseph@oag.ok.gov
charles.dickson@oag.ok.gov
kindanne.jones@oag.ok.gov

*Attorneys for Defendant, Scott Pruitt, in his official capacity as Attorney General of the State of Oklahoma in the case of Center for Media and Democracy v Scott Pruitt, in his official capacity as Attorney General of the State of Oklahoma*²*

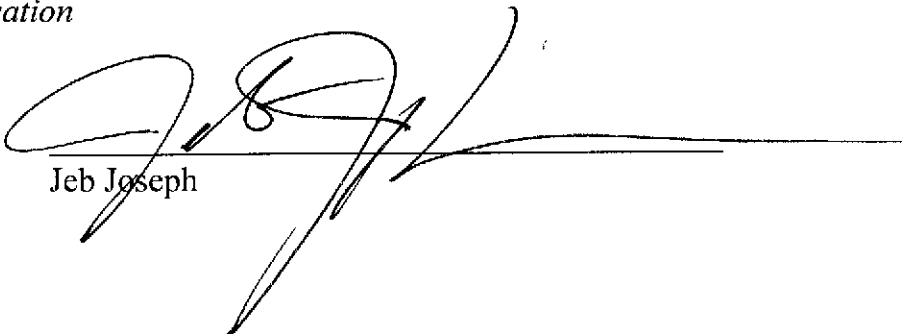
²Assistant Attorney Joseph also represents Governor Mary Fallin in her official capacity in the earlier lawsuit.

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2017, I placed a copy of the above and foregoing document into the U.S. Mail, postage prepaid to:

Robert D. Nelon, OBA #6610
Blake Lawrence, OBA #30620
HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.
100 North Broadway, Suite 2900
Oklahoma City, OK 73102-8865
Telephone: (405) 553-2828
Facsimile: (405) 553-2855
*Attorneys for Plaintiff, Center for Media
and Democracy, a Wisconsin Corporation*

Brady R. Henderson, OBA #21212
ACLU of Oklahoma Foundation
3000 Paseo Drive
Oklahoma City, OK 73103
Telephone: (405) 524-8511
Facsimile: (405) 524-2296
*Attorney for Plaintiff, Center for Media
and Democracy, a Wisconsin
Corporation³*


Jeb Joseph

³Attorney Brady Henderson of the ACLU also represents the Plaintiffs in the earlier lawsuit.

From: BNelon@HallEstill.com
To: [Jeb Joseph](mailto:Jeb.Joseph)
Cc: blawrence@HallEstill.com; bhendersonaclu@gmail.com; arn@prwatch.org
Subject: CMD v. Pruitt -- Agreed Order
Date: Wednesday, February 08, 2017 3:22:01 PM
Attachments: [Order \(re retention of records\).docx](#)

Jeb:

Attached for your review is a draft of an order about the hearing yesterday before Judge Timmons. If the order meets with your approval, please sign and send it back to us. We will take care of presenting it to the court.

As we discussed, I'm going to be out of town the rest of the week. If you have any questions or concerns about the order, please contact Blake Lawrence in our office and discuss the issues with him.

Bob



Robert D. Nelon | Shareholder

100 N Broadway, Suite 2900

Oklahoma City, OK 73102

T: 405 553-2805 | **F:** 405 553-2855

bio | v-card | www.HallEstill.com

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100 North Broadway

Chase Tower, Suite 2900

Oklahoma City, Oklahoma 73102

(405) 553-2828

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Exhibit 1

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

**CENTER FOR MEDIA AND
DEMOCRACY, a Wisconsin
corporation,**

Plaintiff,

v.

Case No. CV-17-223

**SCOTT PRUITT, in his official capacity as
Attorney General of the State of
Oklahoma,**

Defendant.

ORDER

This matter is before the court on February 7, 2017 for hearing on the motion of the plaintiff, Center for Media and Democracy (“CMD”), for a Temporary Restraining Order to restrain and enjoin the defendant, Scott Pruitt, the Attorney General of Oklahoma, his agents, employees, attorneys, and all other individuals under his control (collectively, “Pruitt” or the “AG”), from deleting, destroying, or disposing of any record or document that has been identified by Pruitt or the AG’s office as potentially responsive to any of the requests submitted to Pruitt or the AG’s office by CMD under the Oklahoma Open Records Act (OKLA. STAT. tit. 51, §§24A.1, *et seq.*) (“ORA”). The parties appeared at the hearing through their counsel.

During argument by counsel, Pruitt and the AG’s office agreed that all documents potentially responsive to CMD’s multiple ORA requests would be retained pending the resolution of this case. Accordingly, Pruitt and the AG’s office are directed, as they have agreed, to preserve all potentially responsive documents and not destroy or permit the destruction of those documents pending the final disposition of this action.

This matter is set for further hearing before the Court on February 16, 2017 at 3:00 p.m.

Exhibit 1

IT IS SO ORDERED this ____ day of February 2017.

ALETIA HAYNES TIMMONS
DISTRICT JUDGE

APPROVED:

Robert D. Nelon, OBA #6610
Blake Lawrence, OBA #30620
HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON, P.C.
100 North Broadway, Suite 2900
Oklahoma City, OK 73102-8865
Telephone (405) 553-2828
Facsimile (405) 553-2855

and

Brady R. Henderson, OBA #21212
ACLU of Oklahoma Foundation
3000 Paseo Drive
Oklahoma City, OK 73103
Telephone (405) 524-8511
Facsimile (405) 524-2296

**ATTORNEYS FOR PLAINTIFF,
CENTER FOR MEDIA AND DEMOCRACY**

Jeb E. Joseph, OBA #19137
Charles Dickson, III, OBA#17941
Oklahoma Attorney General's Office
313 NE 21st Street
Oklahoma City, OK 73105
Telephone (405) 521-3921
Facsimile (405) 521-6246

ATTORNEYS FOR DEFENDANT, SCOTT PRUITT

3016222.1:999904:02414

From: blawrence@HallEstill.com
To: [Jeb Joseph](mailto:Jeb.Joseph@HallEstill.com); BNelon@HallEstill.com
Cc: [Lori Cornell](mailto:Lori.Cornell@HallEstill.com); rlachance@HallEstill.com
Subject: RE: CMD v. Pruitt -- Agreed Order
Date: Thursday, February 09, 2017 2:46:36 PM

Jeb,

Thanks for forwarding your redline. I will review and make some additional suggestions and get back to you, and I hope that we can agree on the wording of the agreed order by tomorrow. I can tell you, though, that we are not interested in striking the hearing set by Judge Timmons for next Thursday.

I look forward to working with you on this matter.

Best,



Blake Lawrence | Attorney
100 N. Broadway, Suite 2900
Oklahoma City, OK 73102
T: (405) 553-2872 | F: (405) 553-2855
blawrence@hallestill.com

From: Jeb Joseph [<mailto:jeb.joseph@oag.ok.gov>]
Sent: Thursday, February 09, 2017 2:41 PM
To: Bob Nelon <BNelon@HallEstill.com>
Cc: Blake Lawrence <blawrence@HallEstill.com>; Lori Cornell <lori.cornell@oag.ok.gov>
Subject: RE: CMD v. Pruitt -- Agreed Order

Bob,

Attached is a redline revision of your draft order. I understand that you're out of the office today and tomorrow, so as per our telephone conversation late yesterday afternoon I am copying Blake on this e-mail.

Best regards,
Jeb

From: BNelon@HallEstill.com [<mailto:BNelon@HallEstill.com>]
Sent: Wednesday, February 08, 2017 3:23 PM
To: Jeb Joseph
Cc: blawrence@HallEstill.com; bhendersonaclu@gmail.com; arn@prwatch.org
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Jeb:

Attached for your review is a draft of an order about the hearing yesterday before Judge Timmons. If the order meets with your approval, please sign and send it back to us. We will take care of presenting it to the court.

As we discussed, I'm going to be out of town the rest of the week. If you have any questions or concerns about the order, please contact Blake Lawrence in our office and discuss the issues with him.

Bob



Robert D. Nelson | Shareholder

100 N Broadway, Suite 2900

Oklahoma City, OK 73102

T: 405 553-2805 | **F:** 405 553-2855

[bio](#) | [v-card](#) | www.HallEstill.com

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100 North Broadway

Chase Tower, Suite 2900

Oklahoma City, Oklahoma 73102

(405) 553-2826

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To: [Jeb Joseph; BNelon@HallEstill.com](mailto:Jeb.Joseph@BNelon@HallEstill.com)
Cc: [Lori Cornell; rlachance@HallEstill.com](mailto:Lori.Cornell@HallEstill.com)
Subject: RE: CMD v. Pruitt -- Agreed Order
Date: Friday, February 10, 2017 1:39:41 PM
Attachments: [CMD Pruitt - Agreed Order \(redline w AG\)\(2-17\).docx](#)

Jeb,

In follow-up to my email yesterday, attached is a redline of the order you presented. Bob's recollection to me of the discussion at the hearing was not that Judge Timmons stated that the AG's office should simply follow its records retention protocol, but that it would not destroy or dispose of any responsive or potentially responsive records regardless of such protocol (and that you agreed to follow that order). Additionally, Judge Timmons scheduled next week's hearing to give the AG's office an opportunity to present justification as to the delay in responding to CMD's various open records acts requests, and for CMD to argue for a temporary injunction. Based on that conversation, we are not willing to strike the hearing set by Judge Timmons. Please review and let me know if you are agreeable to this draft. If so, our office can take care of filing if you provide us with a scanned copy of your signature. I'm in the office the remainder of the afternoon if you want to call me to discuss.

Thanks,



Blake Lawrence | Attorney
100 N. Broadway, Suite 2900
Oklahoma City, OK 73102
T: (405) 553-2872 | F: (405) 553-2855
blawrence@hallestill.com

From: Jeb Joseph [<mailto:jeb.joseph@oag.ok.gov>]
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Cc: Blake Lawrence <blawrence@HallEstill.com>; Lori Cornell <lori.cornell@oag.ok.gov>
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Jeb

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[bio](#) | [v-card](#) | www.HallEstill.com

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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

CENTER FOR MEDIA AND
DEMOCRACY, a Wisconsin
corporation,

Plaintiff,

v.

Case No. CV-17-223

SCOTT PRUITT, in his official capacity as
Attorney General of the State of
Oklahoma,

Defendant.

AGREED ORDER

This matter ~~is came~~ before the court on February 7, 2017 at 3:00 p.m. for hearing on the motion of the plaintiff, Center for Media and Democracy ("CMD"), for a Temporary Restraining Order filed on February 7, 2017. ~~to restrain and enjoin the defendant, Scott Pruitt, the Attorney General of Oklahoma, his agents, employees, attorneys, and all other individuals under his control (collectively, "Pruitt" or the "AG"), from deleting, destroying, or disposing of any record or document that has been identified by Pruitt or the AG's office as potentially responsive to any of the requests submitted to Pruitt or the AG's office by CMD under the Oklahoma Open Records Act (OKLA. STAT. tit. 51, §§24A.1, et seq.) ("ORA").~~ The parties appeared at the hearing through their counsel.

During argument by counsel, ~~Pruitt and the~~ Office of the Attorney General informed the Court that its office already follows the State's General Records Disposition Schedule, (as published by the Oklahoma Department of Libraries), which contemplates the State's preservation of records. Based on the existence of that Schedule and because no facts were presented necessitating the issuance of an emergency or temporary restraining order, Plaintiff's motion is denied.

Exhibit 1

The Office of the Attorney General will continue to follow the Oklahoma General Records Disposition Schedule as well as its office's practices, and shall accordingly preserve all documents it reviews that are potentially responsive to Plaintiff's requests pending the final disposition of this action. ~~AG's office agreed that all documents potentially responsive to CMD's multiple ORA requests would be retained pending the resolution of this case. Accordingly, Pruitt and the AG's office are directed, as they have agreed, to preserve all potentially responsive documents and not destroy or permit the destruction of those documents pending the final disposition of this action.~~ The foregoing notwithstanding, the Court hereby orders the Office of the Attorney General to preserve all potentially responsive documents (regardless of whether such documents have been previously reviewed or will be reviewed) and not destroy or permit the destruction of those documents pending the final disposition of this action, regardless of the Oklahoma General Records Disposition Schedule or office practices of the Office of the Attorney General.

~~In light of the parties' representations and communications, as well as the entry of this order, the hearing currently scheduled for February 16, 2017 at 3:00 p.m. is hereby stricken.~~ This matter is set for further hearing before the Court on February 16, 2017 at 3:00 p.m.

IT IS SO ORDERED this day of February 2017.

ALETIA HAYNES TIMMONS
DISTRICT JUDGE

~~IT IS SO ORDERED~~ this ____ day of February 2017.

ALETIA HAYNES TIMMONS
DISTRICT JUDGE

APPROVED:

Robert D. Nelon, OBA #6610
Blake Lawrence, OBA #30620
HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON, P.C.
100 North Broadway, Suite 2900
Oklahoma City, OK 73102-8865
Telephone (405) 553-2828
Facsimile (405) 553-2855

and

Brady R. Henderson, OBA #21212
ACLU of Oklahoma Foundation
3000 Paseo Drive
Oklahoma City, OK 73103
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Jeb E. Joseph, OBA #19137
Charles Dickson, III, OBA#17941
Oklahoma Attorney General's Office
313 NE 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921
Facsimile: (405) 521-6246

Attorneys for Defendant, Attorney General of the State of Oklahoma

ATTORNEYS FOR DEFENDANT, SCOTT PRUITT

3016222.1:999904:02414
1470384.1:999914:00014

From: BNelson@HallEstill.com
To: Jeb.Joseph
Cc: Lori.Cornell; blawrence@HallEstill.com; rlachance@HallEstill.com; bhendersonaclu@gmail.com
Subject: RE: CMD v. Pruitt -- Agreed Order DRAFT/redlines version
Date: Monday, February 13, 2017 2:49:16 PM
Attachments: [Order \(re 2-7-2017 hearing\).docx](#)

Jeb:

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Exhibit 1

HALL
ESTILL
ATTORNEYS AT LAW

Robert D. Nelon | Shareholder
100 N Broadway, Suite 2900
Oklahoma City, OK 73102
T: 405 553-2805 | F: 405 553-2855
[bio](#) | [v-card](#) | www.HallEstill.com

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Sent: Monday, February 13, 2017 11:17 AM
To: Blake Lawrence <blawrence@HallEstill.com>; Bob Nelon <BNelon@HallEstill.com>
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Subject: RE: CMD v. Pruitt -- Agreed Order DRAFT/redlines version

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Hall Estill
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Exhibit 1

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

CENTER FOR MEDIA AND
DEMOCRACY, a Wisconsin
corporation,

Plaintiff,

v.

Case No. CV-17-223

SCOTT PRUITT, in his official capacity as
Attorney General of the State of
Oklahoma,

Defendant.

ORDER

This matter came before the court on February 7, 2017 at 3:00 p.m. for hearing on the motion of the plaintiff, Center for Media and Democracy (“CMD”), for a Temporary Restraining Order filed on February 7, 2017. The parties appeared at the hearing through their counsel.

During argument by counsel, the Office of the Attorney General informed the Court that its office already follows the State Attorney General Consolidated Records Disposition Schedule (as published by the Oklahoma Department of Libraries Archives and Records Commission), which contemplates governs the State agency’s preservation of records. Based on the existence of that Schedule and because no facts were presented necessitating the issuance of an emergency or the Office of the Attorney General agreed that it would preserve all records that might be responsive to the plaintiff’s Open Records Act requests, temporary restraining order, the Plaintiff’s plaintiff’s motion for a temporary restraining order is denied.

The Office of the Attorney General will continue, as it has agreed to do, to follow the Attorney General Consolidated Records Disposition Schedule as well as its office’s practices, and shall accordingly preserve –all potentially responsive documents (regardless of whether such documents have been previously reviewed or will be reviewed) and shall not destroy or permit

Exhibit 1

the destruction of those documents pending the final disposition of this action.

This matter is set for further hearing before the Court on February 16, 2017, at 3:00 p.m.

IT IS SO ORDERED this ___ day of February 2017.

ALETIA HAYNES TIMMONS
DISTRICT JUDGE

APPROVED:

Robert D. Nelson, OBA #6610
Blake Lawrence, OBA #30620
HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON, P.C.
100 North Broadway, Suite 2900
Oklahoma City, OK 73102-8865
Telephone (405) 553-2828
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and

Brady R. Henderson, OBA #21212
ACLU of Oklahoma Foundation
3000 Paseo Drive
Oklahoma City, OK 73103
Telephone (405) 524-8511
Facsimile (405) 524-2296

*Attorneys for Plaintiff,
Center for Media and Democracy*

Jeb E. Joseph, OBA #19137
Charles Dickson, III, OBA#17941
Oklahoma Attorney General's Office
313 NE 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921
Facsimile: (405) 521-6246

Attorneys for Defendant, Attorney General of the State of Oklahoma

3020693 | 999903.02414

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Cc: [Lori Cornell](mailto:Lori.Cornell@HallEstill.com); rlachance@HallEstill.com
Subject: RE: CMD v. Pruitt -- Agreed Order DRAFT/redlines version
Date: Monday, February 13, 2017 11:16:34 AM
Attachments: [Agreed Order \(redline w AG\)\(2.17\) from Plaintiff's counsel - AG revisions 2017-02-13.docx](#)

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Plaintiff,

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Case No. CV-17-223

SCOTT PRUITT, in his official capacity as
Attorney General of the State of
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Defendant.

ORDER

This matter ~~is came~~ before the court on February 7, 2017 at 3:00 p.m. for hearing on the motion of the plaintiff, Center for Media and Democracy (“CMD”), for a Temporary Restraining Order filed on February 7, 2017, to restrain and enjoin the defendant, Scott Pruitt, the Attorney General of Oklahoma, his agents, employees, attorneys, and all other individuals under his control (collectively, “Pruitt” or the “AG”), from deleting, destroying, or disposing of any record or document that has been identified by Pruitt or the AG’s office as potentially responsive to any of the requests submitted to Pruitt or the AG’s office by CMD under the Oklahoma Open Records Act (OKLA. STAT. tit. 51, §§24A.1, et seq.) (“ORA”). The parties appeared at the hearing through their counsel.

During argument by counsel, ~~Pruitt and the~~ Office of the Attorney General informed the Court that its office already follows the State Attorney General Consolidated Records Disposition Schedule, (as published by the Oklahoma Department of Libraries Archives and Records Commission), which contemplates the State’s preservation of records. Based on the existence of that Schedule and because no facts were presented necessitating the issuance of an emergency or temporary restraining order, Plaintiff’s motion is denied.

Exhibit 1

The Office of the Attorney General will continue to follow the Attorney General Consolidated Records Disposition Schedule as well as its office's practices, and shall accordingly preserve AG's office agreed that all documents potentially responsive to CMD's multiple ORA requests would be retained pending the resolution of this case. Accordingly, Pruitt and the AG's office are directed, as they have agreed, to preserve all potentially responsive documents and not destroy or permit the destruction of those documents pending the final disposition of this action. The foregoing notwithstanding, the Court hereby orders the Office of the Attorney General to preserve all potentially responsive documents (regardless of whether such documents have been previously reviewed or will be reviewed) and shall not destroy or permit the destruction of those documents pending the final disposition of this action, regardless of the Oklahoma General Records Disposition Schedule or office practices of the Office of the Attorney General.

In light of the parties' representations and communications, as well as the entry of this order, the hearing currently scheduled for February 16, 2017 at 3:00 p.m. is hereby stricken. This matter is set for further hearing before the Court on February 16, 2017, at 3:00 p.m.

IT IS SO ORDERED this day of February 2017.

ALETIA HAYNES TIMMONS
DISTRICT JUDGE

IT IS SO ORDERED this _____ day of February 2017.

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APPROVED:

Robert D. Nelon, OBA #6610
Blake Lawrence, OBA #30620
HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON, P.C.
100 North Broadway, Suite 2900
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and

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**ATTORNEYS FOR PLAINTIFF,
CENTER FOR MEDIA AND DEMOCRACY**

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Charles Dickson, III, OBA#17941
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313 NE 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921
Facsimile: (405) 521-6246

Attorneys for Defendant, Attorney General of the State of Oklahoma

ATTORNEYS FOR DEFENDANT, SCOTT PRUITT

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1470381.1:999914:00014

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Subject: RE: CMD v. Pruitt -- Agreed Order DRAFT/redlines version
Date: Wednesday, February 15, 2017 8:50:00 AM
Attachments: [Order \(re 2-7-2017 hearing\) - OAG Edits 2017-02-15.docx](#)

Bob,

It was good to visit with you late yesterday. While I don't agree with your comments below, I will say that things were close to resolution when I was dealing with Blake last week. To the extent that you and he had a disconnect because he didn't attend the hearing, and because you had to be out of town Thursday and Friday last week, I understand that breakdowns in communication in your office may have led to the collective delay in getting this resolved. Hopefully, that is now at an end.

Based on the conversation you and I had yesterday, in conjunction with my review of the actual transcript from the hearing, I have made the changes we discussed. Please review and approve, or inform me of additional items which you believe need correction. Then, let's get this on file this morning.

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Attached for your review is a draft of an order about the hearing yesterday before Judge Timmons. If the order meets with your approval, please sign and send it back to us. We will take care of presenting it to the court.

As we discussed, I'm going to be out of town the rest of the week. If you have any questions or concerns about the order, please contact Blake Lawrence in our office and discuss the issues with him.

Bob



Robert D. Nelon | Shareholder

100 N Broadway, Suite 2900

Oklahoma City, OK 73102

T: 405 553-2805 | **F:** 405 553-2855

[bio](#) | [v-card](#) | www.HallEstill.com

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Hall Estill
100 North Broadway
Chase Tower, Suite 2900
Oklahoma City, Oklahoma 73102
(405) 553-2828
www.hallestill.com

Exhibit 1

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

**CENTER FOR MEDIA AND
DEMOCRACY, a Wisconsin
corporation,**

Plaintiff,

v.

Case No. CV-17-223

**SCOTT PRUITT, in his official capacity as
Attorney General of the State of
Oklahoma,**

Defendant.

ORDER

This matter came before the court on February 7, 2017 at 3:00 p.m. for hearing on the motion of the plaintiff, Center for Media and Democracy (“CMD”), for a Temporary Restraining Order filed on February 7, 2017. The parties appeared at the hearing through their counsel.

During argument by counsel, the Office of the Attorney General (“OAG”) informed the Court that its office already follows the State Attorney General Consolidated Records Disposition Schedule (as published by the Oklahoma Department of Libraries Archives and Records Commission), which governs OAG’s preservation of records. Based on the OAG’s acknowledgment of its ongoing preservation of documents already identified as having been requested by Plaintiff, and consistent with the Disposition Schedule as well as relevant law ~~existence of that Schedule,~~ and because no facts were presented necessitating the issuance of an emergency order, the plaintiff’s motion for a temporary restraining order is denied.

The Office of the Attorney General will continue to follow the Attorney General Consolidated Records Disposition Schedule as well as its office’s practices, and shall accordingly preserve all potentially responsive documents (regardless of whether such documents have been previously reviewed or will be reviewed) and shall not destroy or permit

Exhibit 1

the destruction of those documents pending the final disposition of this action.

This ~~matter~~ case is set for further hearing before the Court on February 16, 2017, at 3:00 p.m., with subject matters to be determined at that time by the Court.

IT IS SO ORDERED this ___ day of February 2017.

ALETIA HAYNES TIMMONS
DISTRICT JUDGE

APPROVED:

Robert D. Nelon, OBA #6610

Blake Lawrence, OBA #30620

HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON, P.C.

100 North Broadway, Suite 2900

Oklahoma City, OK 73102-8865

Telephone (405) 553-2828

Facsimile (405) 553-2855

and

Brady R. Henderson, OBA #21212

ACLU of Oklahoma Foundation

3000 Paseo Drive

Oklahoma City, OK 73103

Telephone (405) 524-8511

Facsimile (405) 524-2296

*Attorneys for Plaintiff,
Center for Media and Democracy*

Jeb E. Joseph, OBA #19137

Charles Dickson, III, OBA#17941

Oklahoma Attorney General's Office

313 NE 21st Street

Oklahoma City, OK 73105

Telephone: (405) 521-3921

Facsimile: (405) 521-6246

Attorneys for Defendant, Attorney General of the State of Oklahoma

From: [Jeb Joseph](mailto:Jeb.Joseph@HallEstill.com)
To: BNelson@HallEstill.com
Cc: [Lori Cornell](mailto:Lori.Cornell@HallEstill.com); blawrence@HallEstill.com; rlachance@HallEstill.com; bhendersonaclu@gmail.com; [Charles Dickson](mailto:Charles.Dickson@HallEstill.com)
Subject: RE: CMD v. Pruitt -- Agreed Order DRAFT/redlines version
Date: Wednesday, February 15, 2017 12:29:00 PM
Attachments: [Cntr for Media Order.pdf](#)

Bob,

I just got the voicemail message you let for me a little bit ago. I am glad to know that you and I were able to sort this out so quickly. As per your voice message, all of the changes in the last draft I sent to you are now incorporated, and I have signed the document. (See attached PDF.) Please go ahead and sign and file this, and then if you would please email me a scanned version of the fully executed document.

Thanks again for your time,
Jeb

From: Jeb Joseph
Sent: Wednesday, February 15, 2017 8:51 AM
To: 'BNelson@HallEstill.com'
Cc: Lori Cornell; blawrence@HallEstill.com; rlachance@HallEstill.com; bhendersonaclu@gmail.com; Charles Dickson
Subject: RE: CMD v. Pruitt -- Agreed Order DRAFT/redlines version

Bob,

It was good to visit with you late yesterday. While I don't agree with your comments below, I will say that things were close to resolution when I was dealing with Blake last week. To the extent that you and he had a disconnect because he didn't attend the hearing, and because you had to be out of town Thursday and Friday last week, I understand that breakdowns in communication in your office may have led to the collective delay in getting this resolved. Hopefully, that is now at an end.

Based on the conversation you and I had yesterday, in conjunction with my review of the actual transcript from the hearing, I have made the changes we discussed. Please review and approve, or inform me of additional items which you believe need correction. Then, let's get this on file this morning.

Best Regards,
Jeb

From: BNelson@HallEstill.com [<mailto:BNelson@HallEstill.com>]
Sent: Monday, February 13, 2017 2:50 PM
To: Jeb Joseph
Cc: Lori Cornell; blawrence@HallEstill.com; rlachance@HallEstill.com; bhendersonaclu@gmail.com
Subject: RE: CMD v. Pruitt -- Agreed Order DRAFT/redlines version

Jeb:

Exhibit 1

Sorry I've been out of town and out the loop for several days, and I haven't had the opportunity or practical means to weigh in on the form of the agreed order the court directed us to prepare and file. I've reviewed your latest draft of the order and do have a few suggestions to make. I think it is important that the order reflect the AG's agreement, on the record, to preserve records potentially responsive to our client's ORA requests. That agreement may be driven by and entirely consistent with existing record retentions policies or requirements, but you nevertheless told the court the AG agreed that no records would be destroyed while CMD's suit was pending. That is, I think, in part why the court directed us to prepare an "agreed order."

I do feel compelled to respond to some of the statements you make in the second paragraph of your message below, because I think we have very different views about the proceedings last week. The hearing we had last Tuesday afternoon was not a "quick follow-up hearing" after an *ex parte* hearing. We did not have any *ex parte* hearing with the court. After the suit was filed, I delivered copies of the suit papers to the court's chambers and asked her clerk when we might be able to schedule a hearing. We did not meet with the judge. Rather, her clerk advised us that he would let the court know the suit and motion for TRO had been filed. He said he would let us know if the judge wanted to have a hearing and, if so, when it would be. When we were informed by the judge's clerk that the court wanted us to appear at 3 pm that day, we promptly advised your office of the time for the hearing. (The voicemail message was left with Sarah Greenwalt because she was the one who had previous communications with our client on behalf of the AG's office; we had no idea who would appear for the AG at the hearing.) When you, Charles Dickson, and I appeared before Judge Timmons that afternoon, that was the first time we presented any argument to the court.

As I understood what the court said last week, the "further hearing" set for February 16 was not to resolve any disagreement over the form of the order on the February 7 hearing, and it has not been mooted by the production of records last Friday. That production includes but a fraction of the responsive records your office previously said it had identified and you have not provided any explanation (such as a claimed exemption) why other responsive records have not been provided. Much remains to be discussed with the court about where the records are and when they will be produced as requested under the ORA and demanded in CMD's suit. Accordingly, we believe the hearing this week is essential; we will not agree to strike it. If you cannot agree to include the sentence in the attached order setting the matter for further hearing on February 16, then we'll have to spend some time in that hearing to resolve the form of the order on the February 7 hearing.

Please let me know if you will agree to the order in the form attached.

Bob



Robert D. Nelson | Shareholder

100 N Broadway, Suite 2900
Oklahoma City, OK 73102
T: 405 553-2805 | F: 405 553-2855
[bio](#) | [v-card](#) | www.HallEstill.com

From: Jeb Joseph [<mailto:jeb.joseph@oag.ok.gov>]
Sent: Monday, February 13, 2017 11:17 AM
To: Blake Lawrence <blawrence@HallEstill.com>; Bob Nelon <BNelon@HallEstill.com>
Cc: Lori Cornell <lori.cornell@oag.ok.gov>; Renee Lachance <rlachance@HallEstill.com>
Subject: RE: CMD v. Pruitt -- Agreed Order DRAFT/redlines version

Blake,

Our most-updated comments are attached hereto. The formal name of the particular Records Disposition Schedule was slightly different, so I went ahead and changed that.

With respect to a hearing on Thursday, what is actually the subject of that hearing? You only have to have a quick follow-up hearing when the first (emergency) hearing is done *ex parte*. That did not happen here.

It was my understanding of Her Honor's comments that we were supposed to have the hearing in the event we couldn't come up with an agreement on the Order. That need is not present any more.

Further, to the extent the Judge was interested in when Mr. Surgey's request would be actually answered, that document production already went out to you last week. Again, that need is not present any more. Thus, although it's not redlined on this after, I think that reference to the hearing at the end of Page 2 needs to be changed accordingly.

Please give me a call at (405) 522-8940 if you disagree with any of this. Otherwise, please "accept changes" and send me back a clean copy for final approval. Then let's notify the Judge's chambers about striking the hearing.

Thanks,
Jeb

From: blawrence@HallEstill.com [<mailto:blawrence@HallEstill.com>]
Sent: Monday, February 13, 2017 10:56 AM
To: Jeb Joseph; BNelon@HallEstill.com
Cc: Lori Cornell; rlachance@HallEstill.com
Subject: RE: CMD v. Pruitt -- Agreed Order

Jeb,

Do you have any additional comments to the Order attached here? We would prefer to file as soon as possible in advance of Thursday's hearing.

Thanks,

Exhibit 1



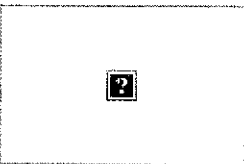
Blake Lawrence | Attorney
100 N. Broadway, Suite 2900
Oklahoma City, OK 73102
T: (405) 553-2872 | F: (405) 553-2855
blawrence@hallestill.com

From: Blake Lawrence
Sent: Friday, February 10, 2017 1:41 PM
To: 'Jeb Joseph' <jeb.joseph@oag.ok.gov>; Bob Nelon <BNelon@HallEstill.com>
Cc: Lori Cornell <lori.cornell@oag.ok.gov>; Renee Lachance <rlachance@HallEstill.com>
Subject: RE: CMD v. Pruitt -- Agreed Order

Jeb,

In follow-up to my email yesterday, attached is a redline of the order you presented. Bob's recollection to me of the discussion at the hearing was not that Judge Timmons stated that the AG's office should simply follow its records retention protocol, but that it would not destroy or dispose of any responsive or potentially responsive records regardless of such protocol (and that you agreed to follow that order). Additionally, Judge Timmons scheduled next week's hearing to give the AG's office an opportunity to present justification as to the delay in responding to CMD's various open records acts requests, and for CMD to argue for a temporary injunction. Based on that conversation, we are not willing to strike the hearing set by Judge Timmons. Please review and let me know if you are agreeable to this draft. If so, our office can take care of filing if you provide us with a scanned copy of your signature. I'm in the office the remainder of the afternoon if you want to call me to discuss.

Thanks,



Blake Lawrence | Attorney
100 N. Broadway, Suite 2900
Oklahoma City, OK 73102
T: (405) 553-2872 | F: (405) 553-2855
blawrence@hallestill.com

From: Jeb Joseph [<mailto:jeb.joseph@oag.ok.gov>]
Sent: Thursday, February 09, 2017 2:41 PM

Exhibit 1

To: Bob Nelon <BNelon@HallEstill.com>
Cc: Blake Lawrence <blawrence@HallEstill.com>; Lori Cornell <lori.cornell@oag.ok.gov>
Subject: RE: CMD v. Pruitt -- Agreed Order

Bob,
Attached is a redline revision of your draft order. I understand that you're out of the office today and tomorrow, so as per our telephone conversation late yesterday afternoon I am copying Blake on this e-mail.
Best regards,
Jeb

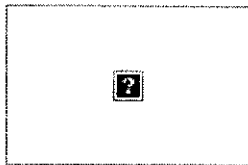
From: BNelon@HallEstill.com [<mailto:BNelon@HallEstill.com>]
Sent: Wednesday, February 08, 2017 3:23 PM
To: Jeb Joseph
Cc: blawrence@HallEstill.com; bhendersonaclu@gmail.com; arn@prwatch.org
Subject: CMD v. Pruitt -- Agreed Order

Jeb:

Attached for your review is a draft of an order about the hearing yesterday before Judge Timmons. If the order meets with your approval, please sign and send it back to us. We will take care of presenting it to the court.

As we discussed, I'm going to be out of town the rest of the week. If you have any questions or concerns about the order, please contact Blake Lawrence in our office and discuss the issues with him.

Bob



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Exhibit 1

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

A PERFECT CAUSE 2013, INC)
(d.b.a. A PERFECT CAUSE);)
THE OKLAHOMA OBSERVER;)
Plaintiffs,)
)
vs.)
)
MARY FALLIN, in her official)
capacity as GOVERNOR OF THE)
STATE OF OKLAHOMA;)
Defendant.)

NOV 14 2016

RICK WARREN
COURT CLERK

89 _____

Case No: CV-2015-2098

Assigned Judge: Stuart

RECEIVED
RECEPTIONIST

NOV 14 2016

ATTORNEY GENERAL

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

COME NOW, the Plaintiffs herein, by and through their counsel of record, and hereby move this honorable Court for an order granting summary judgment in the above-styled cause. In support of this Motion, Plaintiffs state the following:

1. Plaintiffs hereby incorporate all allegations from Plaintiffs' Petition for Injunctive and Declaratory Relief, filed previously herein, which seeks prompt and reasonable access to two specifically-requested sets of public records within Defendant's possession.
2. Plaintiffs are parties claiming relief, which filed their original Petition more than twenty days prior to this Motion, as mandated by 12 O.S. §2056.
3. By its plain language, the Oklahoma Open Records Act places the burden on public officials and public bodies to allow "prompt, reasonable access" to records absent specific and explicit exceptions allowing denial. 51 O.S. §24A.5(5).

4. In the instant case, it is undisputed by the parties that Plaintiff A Perfect Cause requested access to its selected records on May 13, 2014, and that Plaintiff Oklahoma Observer requested its selection of public records on June 16, 2014. *See* Def's Answer, ¶1.
5. There is no genuine factual dispute that neither set of records has been produced, following (so far) 915 days as to A Perfect Cause's request and 848 days as to the Oklahoma Observer's request.
6. As required by Rule 13 of the Rules for District Courts of Oklahoma before summary judgment may be granted, there is no substantial controversy as to any material fact in this case.
7. As a matter of law, Plaintiff is entitled to summary judgment ordering the immediate release of all responsive public records not exempted under the Oklahoma Open Records Act.
8. Plaintiff has filed with this Motion a Brief in Support, detailing the application of Oklahoma law to the present controversy.

WHEREFORE, premises considered, Plaintiffs pray this Honorable Court grant this Motion for Summary Judgment and issue an Order compelling Defendant to grant immediate access to the requested records, to which Plaintiffs are entitled under the Oklahoma Open Records Act. Plaintiff reserves the right to supplement and/or amend this pleading if appropriate and to move for an Order awarding attorney fees and costs, should this Motion for Summary Judgment be granted or Plaintiff otherwise prevail on the merits.

Respectfully Submitted,



Brady R. Henderson, OBA#21212

Ryan Kiesel, OBA#21254

ACLU of Oklahoma Foundation

3000 Paseo Drive
Oklahoma City, OK 73103
(405) 524-8511, (405) 524-2296 (fax)

Attorneys for Plaintiffs

CERTIFICATE OF DELIVERY

The undersigned does hereby certify that on the day of filing, a true and correct copy of the above and foregoing is being delivered to Assistant Attorney General Jeb Joseph, counsel for Defendant Fallin, at the office of the Attorney General of Oklahoma, via First Class U.S. Mail, postage prepaid.



JAN - 9 2017

RICK WARREN
COURT CLERK

89

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

A PERFECT CAUSE 2013, INC., (d.b.a. A
PERFECT CAUSE); THE OKLAHOMA
OBSERVER,

Plaintiff,

v.

MARY FALLIN, in her official capacity as
GOVERNOR OF THE STATE OF
OKLAHOMA,

Defendant.

Case No: CV-15-2098

Judge Roger H. Stuart

**GOVERNOR MARY FALLIN'S RESPONSE IN
OBJECTION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Defendant, Governor Mary Fallin, in her official capacity as Governor of the State of Oklahoma ("Governor"), and hereby presents her Response in Objection to Plaintiff's Motion for Summary Judgment. As set forth more fully below, Governor respectfully requests that this Court deny Plaintiffs' Motion.

INTRODUCTION

The Oklahoma Supreme Court has long recognized that summary judgment is not to be granted lightly. Indeed, that Court has stated in no uncertain terms that, "summary judgment is a lethal weapon and courts must be mindful of its aims and targets and beware of overkill in its use." *Weaver v. Pryor Jeffersonian*, 1977 OK 163, 569 P.2d 967, 974 (citation omitted). In this matter, Plaintiffs filed their lawsuit, conducted no Discovery, and then filed their Motion for Summary Judgment. Plaintiffs' Motion argues what they assume to be the "reasonableness" of the access sought yet presents no appreciation for, or

assessment of, the reasonableness (or unreasonableness) of requests received and processed by the Governor's Office. Reasonable responses must necessarily depend upon receipt of reasonable requests in the first place. In this age of proliferating information creation and the exploding repositories of records, document requests should be narrowly tailored by the requesters in a thoughtful and realistic manner so as to focus on the relevant data and materials actually sought. Hunting should be conducted with rifle-shots, not carpet-bombing. To do otherwise creates a significant drain on public resources that was arguably never intended by the Open Records Act or its authors. For a variety of reasons, Plaintiffs' Motion for Summary Judgment should be denied, as set forth more fully below.

I. PLAINTIFF'S MOTION FAILS TO COMPLY WITH RULE 13.

a. Evidentiary Materials

Plaintiffs bring their Motion for Summary Judgment pursuant to Rule 13 of the Rules for District Courts of Oklahoma. However, Plaintiffs' Motion does not comply with that Rule. Rule 13(a) states first, in part, that, "[a] party may move for . . . summary judgment . . . of any issue on the merits on the ground that the evidentiary material filed with the motion . . . show that there is no substantial controversy as to any material fact." As our Oklahoma Supreme Court put it, "[t]he burden is on the moving party to establish, through evidentiary material attached to the motion for summary judgment, that no genuine issue as to any material fact exists." *Wynn v. Avemco Ins. Co.*, 1998 OK 75, ¶ 7, 963 P.2d 572, 574. (Citations omitted.) [Emphasis added.] However, no evidentiary material was attached to Plaintiffs' Motion. There are not even any exhibits of any kind

attached to Plaintiff's Motion or Brief. Therefore, the Motion fatally fails to comply with Rule 13 and should be denied.

b. Concise Statement of Facts

Rule 13(a) next states, in part, that a Motion for Summary Judgment, “**shall be** accompanied by a concise statement of the material facts as to which the movant contends no genuine issue exists. . .” [Emphasis added.] As our Supreme Court observed, “[i]n demonstrating that no material fact exists, the moving party must present a concise written statement of the material facts as to which the movant contends no genuine issue exists.” *Evers v. FSF Overlake Associates*, 2003 OK 53, ¶ 9, 77 P.3d 581, 585. It is unclear that Plaintiffs' Motion even addresses, (let alone meets), this requirement of Rule 13. While the Motion does offer a list of eight (8) numbered items in its Motion, most of those are merely legal conclusions or allegations unsupported by facts or evidentiary materials. Plaintiffs' Brief in Support fails to offer the required concise statement of undisputed facts. Therefore, the Motion fails to comply with Rule 13 and should be denied.

c. References to the pages and paragraphs or lines of the evidentiary materials

Rule 13(a) next requires that, “[r]eference shall be made in the statement to the pages and paragraphs or lines of the evidentiary materials that are pertinent to the motion.” [Emphasis added.] As the Court of Civil Appeals put it, “[o]nly where the evidentiary materials show ‘no substantial controversy as to any material fact and that one of the parties is entitled to judgment as a matter of law’ is summary judgment permitted.”

Kennedy v. Midwest City H.M.A., Inc., 2006 OK CIV APP 18, ¶ 4, 130 P.3d 772, 774 (citing Rule 13). As noted above, Plaintiffs' Motion and Brief do not present any 'evidentiary materials' at all. Further, both the Motion and Brief lack any references to any pages, paragraphs, or lines of any documents or evidentiary materials. Therefore, with no evidentiary materials presented Plaintiffs are unable to meet their burden of showing the absence of "substantial controversy" as to anything, much less as to facts material to this case. Thus, the Motion fails to comply with Rule 13 and should be denied.

d. Copy of the material relied upon

Rule 13(a) next provides that, "[u]nless otherwise ordered by the court, a copy of the material relied on **shall be attached** to or filed with the statement." Denial of a Motion for Summary Judgment is appropriate when the movant seeking summary judgment fails to attach copies of the materials relied upon by the Motion. Moreover, as our Court of Civil Appeals recently found, "[s]uch language [in Rule 13] does not permit incorporation by reference of previously filed evidentiary material, and we find no error with the court's ruling." *Choate v. Lawyers Title Ins. Corp.*, 2016 OK CIV APP 60, ¶ 24, reh'g denied (Jan. 21, 2016). Like the present Plaintiffs, the plaintiff in *Choate* presented a summary judgment motion which failed to comply with Rule 13 by omitting the evidentiary materials and the concise written statement of facts. The district court's denial of Choate's motion was affirmed. Similarly, these Plaintiffs' Motion fails to comply with Rule 13, and their Motion should be denied.

II. GOVERNOR'S STATEMENT OF MATERIAL FACTS

According to Rule 13(b):

[a]ny party opposing summary judgment . . . shall file . . . a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion . . . [and] shall attach to, or file with, the statement evidentiary material justifying the opposition to the motion, but may incorporate by reference material attached to or filed with the papers of another party." [The statement] "shall set forth and number each specific material fact which is claimed to be in controversy and reference shall be made to the pages and paragraphs or lines of the evidentiary materials."

As noted above, Plaintiffs' Motion fails to provide its own concise written statement of material facts or attached evidentiary material, thereby making it more difficult for Governor to address this aspect of the Rule. However, pursuant to Rule 13(b), Governor offers the following numbered list of material facts or disputes which support of the denial of Plaintiffs' Motion for Summary Judgment, along with references to exhibits, as indicated.

1. The Oklahoma Open Records Act contains no specific deadline or number of days within which all Open Records requests must be fulfilled. (OKLA. STAT. tit. 51§ 24A.5, attached as Exhibit 1).

2. To the best knowledge of Governor's legal staff, no Oklahoma court or case has ever definitively stated a specific deadline or number of days within which any and all Open Records requests must be fulfilled. (*Affidavit of Jennifer Chance, General Counsel to Governor Fallin*, attached as Exhibit 2).

3. Whether or not Plaintiff A Perfect Cause's May 13, 2014 request (or its nineteen (19) sub-parts) is a reasonable request that can be, or should have been, answered in whole or in part. (Ex. 1; and *A Perfect Cause's records request*, attached as Exhibit 3).

4. Whether or not Plaintiff The Oklahoma Observer's July 15, 2014 request is a reasonable request that can be, or should have been, answered in whole or in part. (Ex. 1; and *The Oklahoma Observer's records request*, attached as Exhibit 4).

5. Whether or not Governor's Office's procedures for receiving, processing, and answering Open Records requests are reasonable in light of the number and character of requests received, as well as the core operational tasks necessarily undertaken by the Governor's Office. (Ex. 2; and *Affidavit of Audrey Rockwell*, attached as Exhibit 5).

6. Whether or not Governor's Office's physical and technological abilities to process and search the affected repositories of documents and electronically stored information (ESI) are reasonable in light of the available funding and staffing, as well as the number and character of requests received, but particularly those requests which touch upon and yield large volumes of documents and ESI. (Ex. 2 and Ex. 3).

7. Whether or not the delay in processing and responding to A Perfect Cause's request is reasonable, in light of the frequency and number of Open Records requests received by Governor's Office. *Id.*

8. Whether or not the delay in processing and responding to The Oklahoma Observer's request is reasonable, in light of the frequency and number of Open Records requests received by Governor's Office. *Id.*

9. Whether or not the number of records and electronically stored information (“ESI”) targeted by Plaintiffs’ requests is reasonable, and whether the same are reasonably searched, reviewed, and produced by now given the resources available to the Governor’s Office. *Id.*

10. The Governor’s Office has an affirmative duty to review each record for any applicable privilege, confidentiality, or other sensitive nature before producing it via an Open Records Act request. (Ex. 2; OKLA. STAT. tit. 22 § 1015(B), attached as Exhibit 6; *Protective Order in Pavatt*, attached as Exhibit 7; OKLA. STAT. tit. 51 § 24A.7, attached as Exhibit 8; OKLA. STAT. tit. 74 § 840-2.11, attached as Exhibit 9; and OKLA. STAT. tit. 74 § 3113, attached as Exhibit 10).

11. Any failure by the Governor’s Office to review a record for any applicable privilege, confidentiality, or other sensitive nature before producing it via an Open Records Act request could act as a waiver of privileges held by the Governor, or the State as a whole. (Ex. 1, Ex. 2, Ex. 6, Ex. 7, Ex. 8, Ex. 9 and Ex. 10).

12. Whether or not all of the records requested by A Perfect Cause are subject to disclosure under the Open Records Act. *Id.*

13. Whether or not all of the records requested by The Oklahoma Observer are subject to disclosure under the Open Records Act. *Id.*

14. The number of documents and/or electronically stored files requested that constitute a reasonable request in the context of Open Records requests. The Governor’s

Office legal staff is aware of no statute or decisional language that sets this limit. (Ex. 1 and Ex. 2).

15. The number of subparts any given one (1) Open Records request may contain and still be considered one (1) request. The Governor's Office legal staff is aware of no statute or decisional language that sets this limit. *Id.*

16. Whether or not A Perfect Cause's "May 13, 2014" request constitutes one request or nineteen (19). The Governor's Office legal staff is aware of no statute or decisional language that sets this limit. *Id.*

17. The Governor has a duty to safeguard against unauthorized disclosure of current and former state employees' information. (Ex. 1, Ex. 2, Ex. 6, Ex. 7, Ex. 8, Ex. 9 and Ex. 10).

18. The Governor has a duty to safeguard against waiver of any applicable attorney client privileges. *Id.*

19. In response to the Open Records Request made by "A Perfect Cause," OMES gathered a combined 6,881,190 kilobytes (KB) of data which had potentially relevant material in need of review. (Ex. 5).

20. In response to the Open Records Request made by "The Oklahoma Observer," OMES gathered a combined 1,169,347 kilobytes (KB) of data which had potentially relevant material in need of review. *Id.*

21. At an average of 1.5 pages per email document, there are approximately 100,099 pages worth of email file data in one gigabyte (GB) of electronic storage. (*Lexis-Nexis informational sheet copyright 2007*, attached as Exhibit 11.)

22. At an average of 9 pages per Microsoft Word file document, there are approximately 64,782 pages worth of Word file data in one gigabyte (GB) of electronic storage. *Id.*

23. At an average of 50 pages per Microsoft Excel file document, there are approximately 165,791 pages worth of Excel file data in one gigabyte (GB) of electronic storage. *Id.*

24. Based on these numbers, there are roughly 8,050,537 KB (or just over 8 GB) of ESI to be reviewed just for "A Perfect Cause," and "The Oklahoma Observer's" combined requests. This would mean that there are roughly eight-hundred thousand (800,000) pages' worth of emails to be reviewed for only these two (2) requests.

25. In 2014 alone there were thirty-seven (37) Open Records Act requests made to the Governor's Office, in addition to the thirty-two (32) Open Records Act requests made to the Governor's Office in 2013. (Ex. 5).

26. The number of Open Records act requests made to the Governor's office prior to Plaintiffs' requests, and what number of those have already been fulfilled. *Id.*

27. Certain information relating to capital punishments must remain confidential, and must therefore be searched for and redacted in documents prior to disclosure under the Open Records Act. (Ex. 6 and Ex. 7).

28. Certain information relating to the Governor's security details and protocols must be kept confidential, and sometimes that information is contained in Governor's Office correspondence and/or other documents. (Ex. 2).

III. GOVERNOR HAS A DUTY TO REVIEW RECORDS BEFORE DISCLOSURES.

The Governor is the chief executive of the State of Oklahoma. As such, the Governor acts on behalf of the State. Among the Governor's many duties is safeguarding the lawful privileges and confidentialities of the State, its agencies, and their officials. To that end, the Governor or her staff must review all documents and records for any applicable privilege or confidentiality before producing them in either litigation or Open Records responses, as more fully discussed below.

a. Executive Deliberative Process Privilege Must Not Be Waived.

The executive privilege is, "an inherent power of the Governor." *Vandelay Entm't, LLC v. Fallin*, 2014 OK 109, ¶ 12, 343 P.3d 1273, 1276. The Oklahoma Supreme Court recognizes that this privilege is one that existed at the common law and survives to this day through our State Constitution. As the *Vandelay* Court recognized, the executive privilege is a qualified privilege, and as such "is one in which the burden falls upon the government entity asserting the privilege." (*citation omitted*). *Id.* at ¶ 22. "The primary purpose of the [deliberative process] privilege is to protect the frank exchange of ideas and opinions critical to the government's decisionmaking [sic] processes where disclosure would discourage such discussion in the future[.]" *Id.* at ¶ 21, 343 P.3d 1273, 1278. (*citation*

omitted). This is an important privilege because it protects a critical feature of successful governmental functioning - the requesting, giving, receiving, and processing of varied opinions and advice in order to get at the best ideas and implement them intelligently.

b. Attorney-Client/Attorney Work-Product Privileges Must Not Be Waived.

Similarly, the attorney-client privilege is a fundamental privilege that is “designed to shield the client’s confidential disclosures and the attorney’s advice.” *Chandler v. Denton*, 1987 OK 38, ¶19, 741 P.2d 855, 865. (*citation omitted*). This privilege protects a litigant (or potential litigant) in his or her pursuit of zealous representation of his or her claims and defenses in court. Although it may be too often taken for granted, this privilege sits like a cornerstone to our entire legal process. Further, “[t]he privilege belongs to the client and not to the lawyer. It may be waived only by the client.” *Id.* Additionally, the privilege persists even after the attorney-client relationship has been terminated. *Id.* But, just because the privilege persists does not mean that it is necessarily permanent. Indeed, if waived by the client it is lost. Further, the Open Records Act itself explicitly recognizes the existence and importance of such privileges. By its own language:

1. The Oklahoma Open Records Act . . . does not apply to records specifically required by law to be kept confidential including:

a. records protected by a state evidentiary privilege such as the attorney-client privilege, the work product immunity from discovery . . .

Title 51 Okla. Stat. § 24A.5(1)

As the Oklahoma Evidence Code explicitly states, voluntary disclosure by a person, (or a person's predecessor), of privileged materials serves as a waiver of that privilege. (OKLA. STAT. tit. 12 § 2511). Thus, if the Governor does not assert a privilege then it is waived. According to OKLA. STAT. tit. 12 § 2511 if Governor waives a privilege for herself then she waives it for subsequent Governors, too. As the Supreme Court stated in *Chandler*, “[a]s a general rule, if a client chooses to make or to receive a communication to or from [her] attorney *in the open presence of unnecessary third parties, the communication ceases to be confidential* and is not entitled to the protection afforded by the rule of confidentiality.” *Id.* at ¶21. (*citation omitted*). [Emphasis in original.]

In order to avoid waiver of important privileges, the Governor or her designee(s) must review each document or file before it is disclosed to parties outside of the privilege or those “unnecessary third parties” described by the *Chandler* Court. It would be unreasonable and irresponsible for the Governor's Office to publicly release documents or other materials without first reviewing each one of them, including a review for all applicable privileges. Plaintiffs' Motion for Summary Judgment does not show otherwise. Further, Plaintiffs' Motion fails to demonstrate that there is no controversy as to the depth or breadth of Plaintiffs' Open Records requests or what review and response is reasonable in light of those requests. Plaintiffs' Motion should be denied.

c. Public Employees' Information Must Remain Confidential.

In addition to privileges such as those noted above, the State and its officers (like Governor) must observe and safeguard certain confidentiality. One such confidentiality

relates to State employees' information. Under OKLA. STAT. tit. 51 § 24A.7(D), “[p]ublic bodies **shall keep confidential** the home address, telephone numbers and social security numbers of any person employed or formerly employed by the public body.” [Emphasis added.] Additionally, OKLA. STAT. tit. 74 § 840-2.11 (attached as Exhibit 9, hereto), provides:

The home addresses, home telephone numbers, social security numbers, and information related to personal electronic communication devices of current and former state employees **shall not be open to public inspection or disclosure** without written permission from the current or former state employees or without an order from a court of competent jurisdiction. (Emphasis added).

See also Ex. 10, OKLA. STAT. tit. 74 § 3113 (“No state agency, board, commission or other unit or subdivision of state government may furnish any information indexed by social security number unless required by law or specifically authorized to do so by the holder of said social security number.”).

d. Certain Execution Information Must Remain Confidential.

Section 1015(B) of Title 22 of the Oklahoma Statutes states in pertinent part that:

The identify of all persons who participate in or administer the execution process and persons who supply the drugs, medical supplies, or medical equipment for the execution **shall be confidential and shall not be subject to discovery in any civil or criminal proceeding.**
(Emphasis added.)

(See Ex.6, attached hereto). This language is clear. The confidentiality this statute protects have been approvingly recognized by both Federal and Oklahoma State courts. In *Pavatt v. Jones*, the United States District Court for the Western District of Oklahoma entered a protective order granting substantially the same protection sought in this case. (Ex. 7, at 6). That protective order stated that “[t]he identities of the members of the execution team who are not employees of ODOC (the executioners, the physician(s), the pharmacist(s), and the medical personnel involved with obtaining IV access) shall remain confidential. Plaintiffs and their counsel shall not inquire into the identities of these individuals or seek information that is calculated to lead to the discovery of the identity of these individuals.” *Id.* at 5-6. This confidentiality was later acknowledged by the same court in the matter of *Glossip et al. v. Gross, et al.*, No. 14-665-F (W.D. Okla. December 17-19, 2014) [*Transcript of Preliminary Injunction Hearing*]. The Honorable Judge Friot therein noted, “. . . 1015(B) protects the identities of [execution] participants.” *Id.* at 96. The Oklahoma Supreme Court has approvingly stated of 1015(B) that, “[t]he challenged provision makes secret . . . the identity of the persons who carry out the execution and . . . supply the drugs and medical equipment necessary to do so. At the same time, the provision makes the identity of the executioners and the drug and medical suppliers confidential.” *Lockett et al. v. Evans et al.*, 2014 OK 34, ¶ 12.

The State of Oklahoma has a strong interest in carrying out criminal sentences, including executions. The protections afforded by 1015(B) are critical to that interest. Exposure of individuals and entities involved with executions could influence those, and other individuals and entities, to decline to take part in executions, thwarting the State's ability to execute criminal sentences. This would inflict "a profound injury to the powerful and legitimate interest in punishing the guilty, an interest shared by the State and the victims of crime alike." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998).

Thus, before releasing any materials pursuant to an Open Records Act request the Governor or her designee(s) must review all files and documents request and then redact the those documents' sensitive information like that personal information of public employees, or material protected from disclosure by 1015(B). To do otherwise would subject every public servant (past and present) to an invasion of his or her privacy, and a violation of the employee's trust that his or her public service and exercise of official duties will not subject him or her to harassment at home or in the employee's personal life, or undermine the State's ability to carry out lawfully rendered criminal sentences. Improper disclosures would violate those cited statutes. These are just two examples of the types of confidential information for which the Governor and her staff must review all documents before releasing them pursuant to Open Records requests. Just as the attorney-client and work product privileges are lost if they are opened up to unnecessary third parties, so too is the bell irreversibly rung if a public employee's personal information is disclosed, or if sensitive execution material released. It is both reasonable and necessary for the Governor

to protect those confidentiality. Plaintiffs' Motion for Summary Judgment does not show otherwise, and should be denied.

V. THE CURRENT VOLUME OF RECORDS TO BE SEARCHED, REVIEWED, AND PRODUCED IS NOT CONTEMPLATED BY THE OPEN RECORDS ACT.

The Oklahoma Open Records Act was enacted in 1985. *Fabian & Associates, P.C. v. State ex rel. Dep't of Pub. Safety*, 2004 OK 67, ¶ 9, 100 P.3d 703, 705. The manner and volume in which records are made and stored changed significantly over the span of the ensuing thirty some years. The rise of electronic creation and storage of information as digital data means that it is increasingly faster, easier, and less expensive than was the paper process. ("A Very Short History of Big Data," by Gil Press, *Forbes.com*, May 9, 2013.) In the 1980s most state government data was stored either on paper or microfilm. Today, state government data is being created and stored at a much greater volume than it was thirty-one years ago. Unfortunately, the capability of State officials to perform meaningful searches of that data has not kept pace. Thirty years ago a human being could go to the file cabinet, pull out the expandable folder, sit down at a table, and flip through the paper file (in relatively short order) looking for privileged and confidential documents prior to production. That is no longer reasonably possible. Today most of an office's documents or files are digital *only*, and in some instances require that an information

technology (IT) specialist locate, search, and sort the files into a reviewable collection so that a human reviewer with substantive understanding of the documents' content may then look at each one, page by page, in order to see if there any confidential or privileged data in the requested materials.

Since 1985 our society has seen the rise of electronic mail for correspondence (supplanting hardcopy letters and facsimile transmissions), and an exponential growth in digital storage capacities. Both of these phenomena mean that there is more information being stored and generated than ever before. In 1997, computer scientist and Rutgers University professor Dr. Michael Lesk authored the paper, "How much information is there in the world?," (attached hereto as Exhibit 12), Dr. Lesk describes for the reader a variety of phenomena related to the creation of information in the world, and how much more data is being created every day. Presciently, Dr. Lesk wrote the following:

When we reach a world in which the average piece of information is *never* looked at by a human, we will need to know how to evaluate everything automatically to decide what should get the precious resource of human attention.

Today [1997] the digital library community spends some effort on scanning, compression, and OCR; tomorrow it will have to focus almost exclusively on selection, searching, and quality assessment. Input will not matter as much as relevant choice. Missing information won't be on the tip of your tongue; it will be somewhere in your files."

Dr. Michael Lesk, "How much information is there in the world?" (1997). [Emphasis in original.] <http://www.lesk.com/mlesk/ksg97/ksg.html>

We are at that point now. It's been nineteen years since Dr. Lesk's paper, and we have more than reached the point where we must have a technological, automatic

mechanism to sift through all of our information and let the humans know which documents to give our precious attention in review. This practical and logistical consideration is not contemplated by the Open Records Act because at the time the Act was written our information was conceptualized and managed in ways that were very different from what we experience today.

Plaintiffs' requests, (in particular the nineteen (19) sub-parts of A Perfect Cause's request), are fairly sweeping. They necessarily inquire into the existence and content of documents (emails) which are maintained in an electronic format not readily accessible by the Governor's staff. Unfortunately, many other Open Records requests make this same mistake in their shotgun approach to document gathering. This in turn compounds the problems, and results in a backlog of requests (like those made by Plaintiffs). While Plaintiffs might argue that their requests should be moved to the front of the queue, (thereby leapfrogging and frustrating other, earlier requesters), the Motion fails to demonstrate that necessity. Further, Plaintiffs' Motion fails to demonstrate that their general interpretation of "reasonableness" is the only one, or even a viable one that the law must follow. Plaintiffs' Motion should be dismissed.

VI. TAKING REQUESTS IN THE ORDER THEY ARE RECEIVED IS REASONABLE.

Every kindergarten student knows that you have to wait your turn. Whether it is standing in line at the fast food restaurant, the ticket booth at the movie theater, or waiting for the next available teller at the bank, we are all very familiar with how the process

works. Sometimes it takes longer than others. If the man in front of us at McDonald's has ten children with him we know it is likely going to take a while for him to decide on, order, and receive his food. Conversely, if the couple ahead of us at the fast food place is a pair of young adults in a hurry and on their way to make it on time to a movie, and they are paying with exact change in cash, we know that they are going to finish their transaction fairly quickly. But just because the man with ten children might take a while is no excuse for the cashier to make him stand aside and wait on us or the young couple, just because the cashier knows those customers' requests will be easier and quicker to resolve. It is *reasonable* for the cashier to take the orders of the customers as they arrived: first come, first served.

So, too, it is reasonable for the Governor's office to take, process, and respond to each records request *in the order it was received*. (Ex. 2 and Ex. 3). Before Plaintiffs' Open Records requests were received, the Governor's Office already had multiple requests awaiting process and response in its queue. *Id.* Plaintiffs' requests were reviewed in the order they were received relative to all of the requests the Governor's Office received.

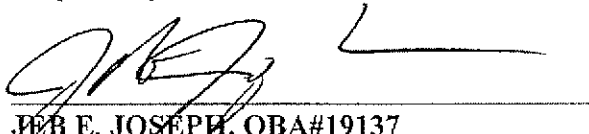
According to the Act, a public body such as the Governor's Office "may establish reasonable procedures which protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions." (Ex. 1). Waiving attorney-client privileges, attorney work product privileges or divulging the identities of execution participants would all have a disruptive effect on some of the Governor's essential functions. Carelessly producing documents without prior review would be reckless and

unreasonable. Reviewing each record before its disclosure is essential in order to avoid these (and other) types of improper disclosures. Review prior to disclosure is inherently reasonable. Reviewing requests in the order they are received is logical and reasonable. Plaintiffs' Motion fails to demonstrate otherwise. The Motion for Summary Judgment should be dismissed.

CONCLUSION

Plaintiffs' Motion for Summary Judgment fails to meet the requirements of Rule 13, fails to show the lack of genuine dispute over material facts, and fails to present a justiciable matter because the Plaintiffs' claims are moot. Therefore, the Motion for Summary Judgment should be denied.

Respectfully submitted,

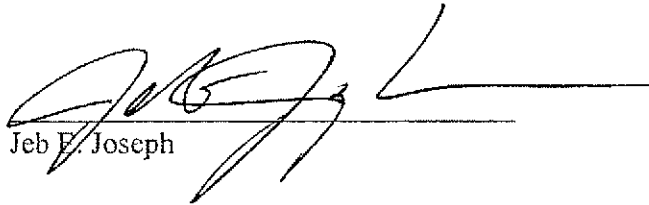


JEB E. JOSEPH, OBA#19137
Assistant Attorney General
Oklahoma Attorney General's Office
Litigation Division
313 NE 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921
Facsimile: (405) 521-4518
Email: jeb.joseph@oag.ok.gov
Counsel for Governor Mary Fallin

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January 2017, I transmitted the foregoing document via U.S. Mail, postage prepaid to:

Brady R. Henderson
Ryan Kiesel
ACLU of Oklahoma Foundation
3000 Paseo Drive
Oklahoma City, OK 73103
Attorneys for Plaintiff


Jeb E. Joseph

Oklahoma Statutes Citationized

Title 51. Officers

Chapter 1 - General Provisions

Oklahoma Open Records Act

Section 24A.5 - Open and Confidential Records

Cite as: O.S. §. ___

All records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours; provided:

1. The Oklahoma Open Records Act, Sections 24A.1 through 24A.30 of this title, does not apply to records specifically required by law to be kept confidential including:

- a. records protected by a state evidentiary privilege such as the attorney-client privilege, the work product immunity from discovery and the identity of informer privileges,
- b. records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act,
- c. personal information within driver records as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725,
- d. information in the files of the Board of Medicolegal Investigations obtained pursuant to Sections 940 and 941 of Title 63 of the Oklahoma Statutes that may be hearsay, preliminary unsubstantiated investigation-related findings, or confidential medical information, or
- e. any test forms, question banks and answer keys developed for state licensure examinations, but specifically excluding test preparation materials or study guides;

2. Any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions; provided however, the Department of Public Safety shall not be required to assemble for the requesting person specific information, in any format, from driving records relating to any person whose name and date of birth or whose driver license number is not furnished by the requesting person.

The Oklahoma State Bureau of Investigation shall not be required to assemble for the requesting person any criminal history records relating to persons whose names, dates of birth, and other identifying information required by the Oklahoma State Bureau of Investigation pursuant to administrative rule are not furnished by the requesting person;

3. Any request for a record which contains individual records of persons, and the cost of copying, reproducing or certifying each individual record is otherwise prescribed by state law, the cost may be assessed for each individual record, or portion thereof requested as prescribed by state law. Otherwise, a public body may charge a fee only for recovery of the reasonable, direct costs of record copying, or mechanical reproduction. Notwithstanding any state or local provision to the contrary, in no instance shall the record copying fee exceed twenty-five cents (\$0.25) per page for records having the dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One Dollar (\$1.00) per copied page for a certified copy. However, if the request:

- a. is solely for commercial purpose, or
- b. would clearly cause excessive disruption of the essential functions of the public body,

then the public body may charge a reasonable fee to recover the direct cost of record search and copying; however, publication in a newspaper or broadcast by news media for news purposes shall not constitute a resale or use of a record for trade or commercial purpose and charges for providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy. The fee charged by the

Exhibit 1

Exhibit 3

AFFIDAVIT OF JENNIFER CHANCE

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

Before me, the undersigned authority, did personally appear JENNIFER CHANCE, who, having been sworn upon her oath did state:

That she is a resident of Oklahoma City, Oklahoma, and an attorney, licensed to practice law in the State of Oklahoma; and

That she currently serves as General Counsel for the Governor of the State of Oklahoma; and

That she is familiar with Title 51 Okla. Stat. § 24A.1 *et seq.*, commonly referred to as the Oklahoma Open Records Act ("Act"), and in particular Title 51 Okla. Stat. § 24A.7(D) of the Act; and

That the language of the Act itself, does not definitively set or require a specific deadline or number of days in which any and all Open Records Act requests must be fulfilled; and

That the language of the Act itself does not definitively set or require a specific maximum number of sub-parts which any Open Records Act request may contain and still be considered a single, discreet request; and

That she is familiar with Title 74 Okla. Stat. § 840-2.11 which requires State entities and officials to protect certain personal information regarding public employees; and

That she is familiar with Title 22 Okla. Stat. § 1015(B) which requires that certain information relating to the State's death penalty be kept confidential; and

That she is aware that, pursuant the Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), and potentially other similar regulations, certain information which may be included in documents or materials possessed by the Governor's Office should not be disclosed; and

That she is aware that from time to time other information which may be included in documents or materials possessed by the Governor's Office should not be disclosed due to confidentiality and/ or other privilege requirements pursuant to existing law; and

That the Governor's Office receives numerous Open Records Act requests each month;

Exhibit 2

Exhibit 3

Department of Public Safety for a copy in a computerized format of a record of the Department shall not exceed the direct cost of making the copy unless the fee for the record is otherwise set by law.

Any public body establishing fees under this act shall post a written schedule of the fees at its principal office and with the county clerk.

In no case shall a search fee be charged when the release of records is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.

The fees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information;

4. The land description tract index of all recorded instruments concerning real property required to be kept by the county clerk of any county shall be available for inspection or copying in accordance with the provisions of the Oklahoma Open Records Act; provided, however, the index shall not be copied or mechanically reproduced for the purpose of sale of the information;

5. A public body 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. Any public body which makes the requested records available on the Internet shall meet the obligation of providing prompt, reasonable access to its records as required by this paragraph; and

6. A public body shall designate certain persons who are authorized to release records of the public body for inspection, copying, or mechanical reproduction. At least one person shall be available at all times to release records during the regular business hours of the public body.

Historical Data

Laws 1985, SB 276, c. 355, § 5, eff. November 1, 1985; Amended by Laws 1986, SB 487, c. 213, § 1, emerg. eff. June 6, 1986; Amended by Laws 1986, HB 1633, c. 279, § 29, emerg. eff. July 1, 1986; Amended by Laws 1988, HB 1846, c. 187, § 4, emerg. eff. June 6, 1988; Amended by Laws 1992, HB 2142, c. 231, § 2, emerg. eff. May 19, 1992; Amended by Laws 1993, HB 1053, c. 97, § 7, eff. September 1, 1993; Amended by Laws 1996, SB 719, c. 209, § 3, eff. November 1, 1996; Amended by Laws 2000, HB 2100, c. 342, § 8, emerg. eff. July 1, 2000 (superseded document available); Amended by Laws 2001, SB 665, c. 137, § 1, emerg. eff. April 24, 2001 (superseded document available); Amended by Laws 2005, HB 1553, c. 199, § 5, eff. November 1, 2005; Amended by Laws 2005, HB 1318, c. 223, § 1, eff. November 1, 2005 (repealed by Laws 2006, HB 3139, c. 16, § 35, emerg. eff. March 29, 2006) (superseded document available); Amended by Laws 2006, HB 3139, c. 16, § 34, emerg. eff. March 29, 2006 (superseded document available); Amended by Laws 2015, HB 1037, c. 370, § 1, emerg. eff. June 4, 2015 (superseded document available); Amended by Laws 2016 HB 2281, c. 54, § 1, eff. November 1, 2016 (superseded document available).

Exhibit 1

Exhibit 3

and

That the Governor's Office implemented a queue system of receiving, processing, and responding to Open Records Act requests in compliance with the relevant privileges and confidentiality statutes and rules; and

That before a request is addressed, the requests received earlier in time will first be addressed; and

That many requests made under the Act seek disclosure of Governor's Office correspondence, which includes electronic mail; and

That Governor's Office records and correspondence sometimes include material which is protected by recognized privileges such as the attorney-client privilege, the attorney work product doctrine, and/or the deliberative process privilege; and

That Governor's Office records and correspondence sometimes includes material which is protected by confidentiality requirements such as Title 51 Okla. Stat. § 24A.7(D), Title 74 Okla. Stat. § 840-2.11, Title 22 Okla. Stat. § 1015(B), FERPA, HIPAA, or similar requirements; and

That Governor's Office records and correspondence sometimes include material regarding sensitive information relating to security details and protocols with regards to the protection of the Governor and the First Family, and that this information must not be disclosed; and

That prior to disclosing documents to any requestor making a request under the Open Records Act, the Governor's Office has a duty to review those documents for any applicable privileges or confidentiality or security concerns; and

That disclosure of confidential or privileged documents by the Governor's Office could act as a waiver of those confidentiality or privileges; and

For each Open Record Request the Governor's Office requests that the Information Services Division of the Oklahoma Office of Management and Enterprise Services (ISD - OMES) perform a search of our email server for the stored data that may be responsive to each search request; and

That before any documents are produced pursuant to requests under the Act, they must be reviewed by human reviewers within the Governor's legal staff to determine each document's responsiveness to the request, as well as to screen each document for applicable privileges and/or confidentiality; and

Exhibit 2

Exhibit 3

That at the time Plaintiffs' Open Records requests were received there were already multiple requests pending; and

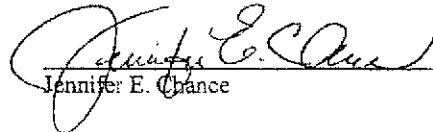
That for some Open Records Act requests the Governor's Office must wait and rely upon technological search and review of materials which exist only in an electronic format; and

That the Governor's Office has received and processed all Open Records Requests in a reasonable and professional manner; and

That the Governor's Office has a myriad of core operational tasks which must be undertaken on a constant (and often changing) basis, including but not limited to reviewing and signing new legislation within very limited time frames, reviewing pardon and parole applications, reviewing and responding to extradition requests within limited time frames, responding to notices of intent of rulemaking on short notice, and addressing emergency situations as they arise, all in addition to the usual ongoing requirements of gubernatorial business.

FURTHER AFFIANT SAYETH NOT.

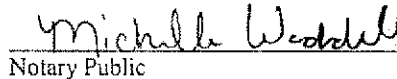
Dated this 6th day of January, 2017.


Jennifer E. Chance

Subscribed and sworn to before me this 6th day of January, 2017.

My Commission Expires:

August 18, 2019


Notary Public

My Commission Number:

11007618

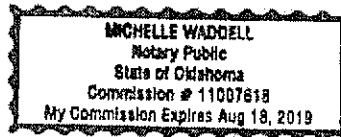


Exhibit 2

Exhibit 3



P.O. BOX 14275 • OKLAHOMA CITY, OKLAHOMA 73113 • 405.478.8700

15 July 2014

The Honorable Mary Fallin
Governor of Oklahoma
212 State Capitol Building
2300 N. Lincoln Blvd.
Oklahoma City, OK 73105-4890

Dear Governor:

This is a formal request under Oklahoma Statute 51 O.S. 24 A.1 for all records and communications from or to your office regarding and pertaining to the executions by the State of Oklahoma of Garry Thomas Allen on November 6, 2012 and Brian Darrell Davis on June 25, 2013.

This request, as per statute, includes "all documents, including, but not limited to, any book, paper, photograph, microfilm, 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, 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."

This request is for such records and communications to or from the Attorney General, Department of Corrections, Pardon and Parole Board and any other government agency or state government contractor acting under the color of authority for the State of Oklahoma.

This request includes records of any and all state funds expended and invoices paid by the state facilitating the executions of Messrs. Allen and Davis.

Should any part of our request be denied or any records withheld, we ask that you provide written notice of what specific part was denied and/or which documents you withheld, citing the specific legal privileges or exemptions to the Open Records Act.

Thank you for your prompt attention to this request.

Sincerely,

Arnold Hamilton
Editor

Exhibit "B"

Exhibit 4

Exhibit 3

AFFIDAVIT OF AUDREY ROCKWELL

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

Before me, the undersigned authority, did personally appear AUDREY ROCKWELL, who, having been sworn upon her oath did state:

That she is a resident of Midwest City, Oklahoma; and

That she currently serves as the Governor's Extradition Coordinator and Paralegal for the General Counsel to the Governor of the State of Oklahoma; and

That as part of her assigned duties as Paralegal in the Governor's Office she is in charge of intake and processing of Open Records Act requests; and

That she is familiar with Title 51 Okla. Stat. § 24A.1 *et seq.*, commonly referred to as the Oklahoma Open Records Act ("Act"); and

That the Governor's Office receives numerous Open Records Act requests each month; and

That the Governor's Office received thirty-seven (37) new Open Records requests in 2014 alone, and in 2013 alone there were thirty-two (32) new Open Records requests; and

That the Governor's Office implemented a queue system of receiving, processing, and responding to Open Records Act requests in compliance with the relevant privileges and confidentiality statutes and rules; and

That before a request is addressed, the requests received earlier in time will first be addressed; and

That as one request is fulfilled reviewing and processing of the next queued request would begin, proceeding in the order of requests received; and

That she is aware that from time to time other information which may be included in documents or materials possessed by the Governor's Office should not be disclosed due to the data's sensitive nature; and

That many requests made under the Act seek disclosure of Governor's Office correspondence, which includes electronic mail; and

Exhibit 5

Exhibit 3

That before any documents are produced pursuant to requests under the Act, they must be reviewed by human reviewers within the Governor's legal staff to determine each document's responsiveness to the request, as well as to screen each document for applicable privileges and/or confidentiality; and

That at the time Plaintiffs' Open Records requests were received there were already multiple requests pending; and

That the Open Records Act requests made by *The Oklahoma Observer* and "A Perfect Cause," required electronic records searches yielding 1,169,347 KB and 6,881,190 KB of data, respectively; and

That in 2014 there were at least thirty-seven (37) Open Records Act requests made to the Governor's Office, in addition to preexisting requests that were already pending; and

That in 2013 there were no less than thirty-two (32) Open Records Act requests made to the Governor's Office, in addition to preexisting requests that may have already been pending; and

That the Governor's Office has received and processed all Open Records Requests in a reasonable and professional manner; and

FURTHER AFFIANT SAYETH NOT.


Dated this 6th day of January, 2017.


Audrey Rockwell

Subscribed and sworn to before me this 6th day of January, 2017.

My Commission Expires:

August 18, 2019


Notary Public

My Commission Number:

11007618

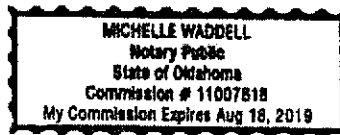


Exhibit 5

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Oklahoma Statutes Citationized

Title 22. Criminal Procedure

Chapter 17 - The Death Penalty

Section 1015 - Execution of Judgment of Death - Location - Procedure

Cite as O.S. § _____

A. A judgment of death must be executed at the Oklahoma State Penitentiary at McAlester, Oklahoma, said prison to be designated by the court by which judgment is to be rendered.

B. The judgment of execution shall take place under the authority of the Director of the Department of Corrections and the warden must be present along with other necessary prison and corrections officials to carry out the execution. The warden must invite the presence of a physician and the district attorney of the county in which the crime occurred or a designee, the judge who presided at the trial issuing the sentence of death, the chief of police of the municipality in which the crime occurred, if applicable, and lead law enforcement officials of any state, county or local law enforcement agency who investigated the crime or testified in any court or clemency proceeding related to the crime, including but not limited to the sheriff of the county wherein the conviction was had, to witness the execution; in addition, the Cabinet Secretary of Safety and Security must be invited as well as any other personnel or correctional personnel deemed appropriate and approved by the Director. The warden shall, at the request of the defendant, permit the presence of such ministers chosen by the defendant, not exceeding two, and any persons, relatives or friends, not to exceed five, as the defendant may name; provided, reporters from recognized members of the news media will be admitted upon proper identification, application and approval of the warden. The identity of all persons who participate in or administer the execution process and persons who supply the drugs, medical supplies or medical equipment for the execution shall be confidential and shall not be subject to discovery in any civil or criminal proceedings. The purchase of drugs, medical supplies or medical equipment necessary to carry out the execution shall not be subject to the provisions of the Oklahoma Central Purchasing Act.

C. In the event the defendant has been sentenced to death in one or more criminal proceedings in this state, or has been sentenced to death in this state and by one or more courts of competent jurisdiction in another state or pursuant to federal authority, or any combination thereof, and this state has priority to execute the defendant, the warden must invite the prosecuting attorney or his or her designee, the judge, and the chief law enforcement official from each jurisdiction where any death sentence has issued. The above mentioned officials shall be allowed to witness the execution or view the execution by closed circuit television as determined by the Director of the Department of Corrections.

D. A place shall be provided at the Oklahoma State Penitentiary at McAlester so that individuals who are eighteen (18) years of age or older and who are members of the immediate family of any deceased victim of the defendant may witness the execution. The immediate family members shall be allowed to witness the execution from an area that is separate from the area to which other nonfamily member witnesses are admitted; provided, however, if there are multiple deceased victims, the Department shall not be required to provide separate areas for each family of each deceased victim. If facilities are not capable or sufficient to provide all immediate family members with a direct view of the execution, the Department of Corrections may broadcast the execution by means of a closed circuit television system to an area in which other immediate family members may be located.

Immediate family members may request individuals not directly related to the deceased victim but who serve a close supporting role or professional role to the deceased victim or an immediate family member, including, but not limited to, a minister or licensed counselor. The warden in consultation with the Director shall approve or disapprove such requests. Provided further, the Department may set a limit on the number of witnesses or viewers within occupancy limits.

As used in this section, "members of the immediate family" means the spouse, a child by birth or adoption, a stepchild, a parent, a grandparent, a grandchild, a sibling of a deceased victim, or the spouse of any immediate family member specified in this subsection.

Exhibit 6

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E. Any surviving victim of the defendant who is eighteen (18) years of age or older may view the execution by closed circuit television with the approval of both the Director of the Department of Corrections and the warden. The Director and warden shall prioritize persons to view the execution, including immediate family members, surviving victims, and supporting persons, and may set a limit on the number of viewers within occupancy limits. Any surviving victim approved to view the execution of the defendant may have an accompanying support person as provided for members of the immediate family of a deceased victim. As used in this subsection, "surviving victim" means any person who suffered serious harm or injury due to the criminal acts of the defendant of which the defendant has been convicted in a court of competent jurisdiction.

Historical Data

R.L. 1910, § 5982; Amended by Laws 1913, HB 134, c. 113, p. 209, § 9; Amended by Laws 1951, HB 65, p. 64, § 1, emerg. eff. May 1, 2007; Amended by Laws 1992, HB 2268, c. 106, § 2, eff. September 1, 1992; Amended by Laws 1996, HB 2056, c. 28, § 1, emerg. eff. April 8, 1996; Amended by Laws 1997, SB 656, c. 173, § 1, emerg. eff. May 7, 1997 (superseded document available); Amended by Laws 1997, SB 610, c. 357, § 8, emerg. eff. June 9, 1997 (superseded document available); Amended by Laws 2004, HB 2383, c. 118, § 1, eff. November 1, 2004 (superseded document available); Amended by Laws 2007, SB 905, c. 358, § 7, emerg. eff. July 1, 2007 (superseded document available); Amended by Laws 2009, SB 613, c. 275, § 3, eff. November 1, 2009 (superseded document available); Amended by Laws 2011, HB 1991, c. 70, § 2, eff. November 1, 2011 (superseded document available).

Exhibit 6

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**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

(1) JAMES PAVATT,)
Plaintiff,)
and)
JEFFREY D. MATTHEWS,)
Intervenor Plaintiff,)
v.) **Case No. CIV-10-141-F**
(1) JUSTIN JONES, in his capacity as Director)
of the Oklahoma Department of Corrections;)
(2) RANDALL WORKMAN, in his capacity as)
Warden of the Oklahoma State Penitentiary;)
(3) EARNEST D. WARE;)
(4) TED LOGAN;)
(5) MATTHEW HUNTER MCBEE;)
(6) ROBERT L. RAINEY;)
(7) LINDA NEAL;)
(8) JERRY SMITH;)
(9) DAVID C. HENNEKE, in their capacities)
as members of the Oklahoma Board of)
Corrections; and)
(10) - (60) DOES 1-50, UNKNOWN)
EXECUTIONERS, in their capacities as)
employees and/or agents of the Oklahoma)
Department of Corrections,)
Defendants.)

PROTECTIVE ORDER

Defendants' Motion for Protective Order (Doc. 40) is now before the Court. Having reviewed Defendants' Motion and all filings relevant thereto, the Court finds that Defendants' Motion is supported by good cause and should be granted.

IT IS THEREFORE ORDERED:

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1. Unless otherwise ordered, none of the documents, materials, testimony or information generated or produced during discovery in this action and designated by any party as "CONFIDENTIAL" shall be revealed or disclosed, in whole or in part, or described, in whole or in part, to any person other than:
 - a. the parties' attorneys who are involved in the prosecution or defense of this action;
 - b. employees of such attorneys, who are involved in the prosecution or defense of this action;
 - c. expert witnesses who have been retained or consulted to assist in the prosecution or defense of this action; and
 - d. the trial judge in this action, and administrative personnel of the trial judge's office.
2. None of the documents, materials, testimony or information so designated as "CONFIDENTIAL" shall be used by any recipient authorized in subparagraphs (a)-(d) above for any purpose other than the prosecution or defense of this action.
3. Documents, materials, testimony or information may be designated by a party as "CONFIDENTIAL" by a written notice to the non-designating party or parties describing the designated documents, materials, testimony or information. Alternately, documents may be designated as "CONFIDENTIAL" by marking a document with the notation "CONFIDENTIAL." Alternately, information and testimony generated during depositions may be designated as "CONFIDENTIAL" by

the making of a statement on the record that confidential treatment under this Order is requested.

4. Documents, including transcripts, which have been designated as "CONFIDENTIAL," or which contain information designated as "CONFIDENTIAL," and which are filed with the Court, shall be filed in sealed envelopes bearing the title of the case and the prominently displayed notation: "CONFIDENTIAL: NOT TO BE OPENED EXCEPT BY COURT ORDER."
5. Any photographs or video reproduction ("digital images") taken of the execution chamber at Oklahoma State Penitentiary during the course of this litigation are considered confidential and are subject to this protective order. Such digital images may only be used for the litigation of this case. All print reproductions or video media shall be stamped "CONFIDENTIAL". Plaintiffs' counsel and all persons affiliated with Plaintiffs shall delete all electronic copies of such digital images and return all printed images to Defendants after this lawsuit has become final.
6. Each party will designate as "CONFIDENTIAL" only those documents, materials, testimony and information which they in good faith believe to be confidential, or which will cause a party or person annoyance, embarrassment or oppression, within the meaning of Rule 26(c) of the Federal Rules of Civil Procedure.
7. If either party believes that any document or item of information was improperly designated as "CONFIDENTIAL," that party may file a motion with the Court, under seal, requesting that the seal be lifted with regard to any identified testimony or exhibits and set forth the reasons that the matter is either not "CONFIDENTIAL" or

Exhibit 7

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that it should be unsealed regardless of its status. The requirement to file this motion to unseal does not alter the fact that it is the designating party's burden to establish the basis for the sealing of any documents or testimony.

8. In the event that any entity or person subject to this Order receives a subpoena, civil investigative demand or other process or request seeking disclosure of any document or information designated as "CONFIDENTIAL," such entity or person shall serve immediate written notice of such request to all parties, together with a copy of such process.
9. Each recipient authorized by this Order, to whom "CONFIDENTIAL" information, documents, materials or testimony has been disclosed, or is disclosed pursuant to this Order, shall be advised that it is subject to the terms of an order of the Court, and that the sanctions for any violation of this Order include the penalties which may be imposed by the Court for contempt.
10. This Order shall not terminate upon termination of this litigation. Any documents, transcripts or other materials produced by a party and designated as "CONFIDENTIAL," and all copies thereof, shall be returned to the producing party when the case is closed and not subject to further review, as determined by the Court.
11. The Clerk is directed to maintain under seal all pleadings, documents and transcripts of testimony filed in Court in this action which have been designated, in whole or in part, as "CONFIDENTIAL" pursuant to this Order, provided that any such materials shall be lodged with the Clerk in a sealed envelope bearing a label clearly disclosing

that the enclosed materials have been designated as "CONFIDENTIAL" and are filed under seal.

12. Messrs. Matthews and Pavatt (and any other inmate who joins this case) will not be permitted to view photos, videos, or depictions of the execution chamber, or other documents produced by Defendants in this litigation. The Court finds that the prison's unique security interests concerning the execution process outweigh Plaintiffs' interest in allowing Messrs. Matthews and Pavatt direct access to any of the documents or testimony produced or procured during the course of this litigation. This is particularly so in light of the fact that Messrs. Matthews and Pavatt's lack of access to this information will have no bearing on the outcome of the litigation. Messrs. Matthews and Pavatt (and any other inmate who joins this case) are not to be permitted to view photos, videos, or depictions of the execution chamber, or any of the documents produced by Defendants or any of the transcripts generated during discovery which may be designated as confidential. This Order does not preclude Plaintiffs from re-urging this matter as to any specific document. This Order also does not preclude Messrs. Matthews and Pavatt (and any other inmate who joins this case) from having direct access to any non-confidential document that is filed with the Court in a manner making it publicly available through the Court's ECF system.
13. The identities of the members of the execution team who are not employees of ODOC (the executioners, the physician(s), the pharmacist(s), and the medical personnel involved with obtaining IV access) shall remain confidential. Plaintiffs and their


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counsel shall not inquire into the identifies of these individuals or seek information that is calculated to lead to the discovery of the identity of these individuals.

14. Plaintiffs' inquiry shall also be limited to matters arising from executions occurring since the change of the lethal injection protocol on or about August 7, 2006. Plaintiffs shall not inquire into the subject of executions occurring prior to August 7, 2006, given that such occurrences would not bare on the constitutionality of the current policy.
15. This Order shall not be modified except after notice and an opportunity to be heard is accorded all parties, except that neither this paragraph, not anything else in this Order, shall preclude the Court from making reference to confidential information or materials in orders entered by the Court.

Dated this 30th day of August, 2010.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

10-0141p010 PO vpd

Exhibit 7

Exhibit 3

Oklahoma Statutes Citationized

Title 51. Officers

Chapter 1 - General Provisions

Oklahoma Open Records Act

Section 24A.7 - Confidential Personnel Records of Public Body

Cite as: O.S. §. ____

A. A public body may keep personnel records confidential:

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

2. Where disclosure would constitute a clearly unwarranted invasion of personal privacy such as employee evaluations, payroll deductions, employment applications submitted by persons not hired by the public body, and transcripts from institutions of higher education maintained in the personnel files of certified public school employees; provided, however, that nothing in this subsection shall be construed to exempt from disclosure the degree obtained and the curriculum on the transcripts of certified public school employees.

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

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

2. The gross receipts of public funds;

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

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

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

D. Public bodies shall keep confidential the home address, telephone numbers and social security numbers of any person employed or formerly employed by the public body.

E. Except as otherwise required by Section 6-101.16 of Title 70 of the Oklahoma Statutes, public bodies shall keep confidential all records created pursuant to the Oklahoma Teacher and Leader Effectiveness Evaluation System (TLE) which identify a current or former public employee and contain any evaluation, observation or other TLE record of such employee.

Historical Data

Laws 1985, SB 276, c. 355, § 7, eff. November 1, 1985; Amended by Laws 1990, HB 1883, c. 257, § 6, emerg. eff. May 23, 1990; Amended by Laws 1994, HB 2268, c. 177, § 1, eff. September 1, 1994; Amended by Laws 2005, HB 1728, c. 116, § 2, eff. November 1, 2005 (superseded document available); Amended by Laws 2014, HB 3173, c. 130, § 1, eff. November 1, 2014 (superseded document available).

Exhibit 8

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Oklahoma Statutes Citationized

Title 74. State Government

Chapter 27A - Oklahoma Personnel Act

Rights and Benefits

Section 840-2.11 - State Employee Information Not Open to Public Inspection or Disclosure

Cite as: O.S. §. _____


The home addresses, home telephone numbers, social security numbers, and information related to personal electronic communication devices of current and former state employees shall not be open to public inspection or disclosure without written permission from the current or former state employees or without an order from a court of competent jurisdiction.

Historical Data


Laws 1992, HB 1973, c. 367, § 28, emerg. eff. June 9, 1992; Renumbered from 74 O.S. § 841.6A by Laws 1994, HB 2331, c. 242, § 64; Amended by Laws 2002, SB 1384, c. 347, § 6, eff. November 1, 2002 (superseded document available); Amended by Laws 2003, SB 703, c. 212, § 10, emerg. eff. July 1, 2003 (superseded document available).


Exhibit 9

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 Oklahoma Statutes Citationized

 Title 74. State Government

 Chapter 49 - Miscellaneous

 Section 3113 - Disclosure of Information Indexed by Social Security Numbers Prohibited -

Exceptions

Cite as: O.S. §. _____

No state agency, board, commission or other unit or subdivision of state government may furnish any information indexed by social security number unless required by law or specifically authorized to do so by the holder of said social security number. Provided that this section shall not apply to a report produced by a state agency of monetary payments made to any state official or employee from State Treasury funds or accounts.

Historical Data

Laws 1974, HB 1652, c. 147, § 3.

Exhibit 10

Exhibit 3

How Many Pages in a Gigabyte?

Your client calls to request an estimate of how much it will cost to conduct a review of the client's electronic files. In your mind the formula is clear—the number of pages to review divided by the number of attorneys on the review team divided by the average number of pages reviewed each day equals a rough estimate of the number of attorney hours required for review. In such a scenario, attorneys may find themselves trying to do quick calculations on Post-it® notes based solely on the number of gigabytes. Unfortunately, that leaves one key factor in the equation unknown: What is the number of pages?

Arriving at the answer can be a little tricky. The number of pages in a given file varies widely based on different file types and characteristics; such as whether the original file contains system data in addition to the readable data (as in a .pst email file); includes special formatting (as in an .xls spreadsheet file); or contains only pure text (as in a .txt text file). The secret to making a good page estimate is to evaluate the file types included in the dataset.

The table below provides an average number of pages per gigabyte for some common document types.

DOCUMENT TYPE	AVERAGE PAGES/DOC	AVERAGE PAGES/GIG
Microsoft® Word® Files	9	64,782
Email Files	13	100,099
Microsoft® Excel® Files	50	165,791
Lotus® 1-2-3 Files	55	297,317
Microsoft® PowerPoint® Files	14	17,562
Text Files	20	677,963
Image Files	1.6	15,477

Although the actual number of pages cannot be determined accurately until the data is actually processed, it is possible to provide a ballpark estimate before a project begins. Once the scope is established, attorneys will be in the best possible position to set client expectations and begin working on the rest of the electronic discovery plan.

LexisNexis

Exhibit 11

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The Discovery Experts: Data Collection and Forensics Consultants

LexisNexis Discovery Services has the right consulting and technology choice for every discovery matter. Top law firms, corporations and government agencies rely on the LexisNexis® products and services, Applied Discovery®, Concordance™, and Hosted FYI™, to meet their discovery obligations on time, accurately and cost-effectively. Services include records and information management consulting, data filtering, data processing, online review and document production in the format that each matter requires. The Data Collection and Forensics teams work with clients to design strategies for the efficient and forensically sound harvest of electronic documents and, if necessary, to undertake investigations of relevant case data.

For more information or to contact the experts, please visit lexisnexis.com/discovery.

LexisNexis®

Exhibit 11

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How Much Information Is There In the World?

Michael Lesk

Abstract

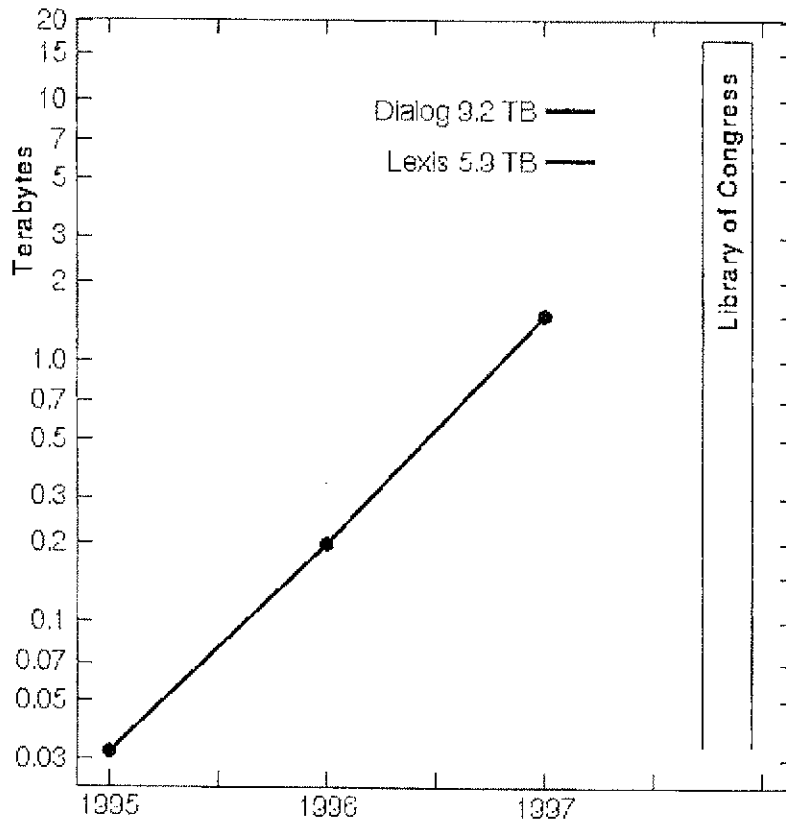
How much information is there in the world? This paper makes various estimates and compares the answers with the estimates of disk and tape sales, and size of all human memory. There may be a few thousand petabytes [*] of information all told; and the production of tape and disk will reach that level by the year 2000. So in only a few years, (a) we will be able save *everything* - no information will have to be thrown out, and (b) the typical piece of information will *never* be looked at by a human being.

Here is a chart of the current amount of online storage, comparing both commercial servers [Tenopir 1997], and the Web [Markoff 1997], [Mauldin 1995], with the Library of Congress. These numbers involve Ascii text files only. This chart suggests that next year the Web will be as large as LC.

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Web size



The Web has been growing 10-fold each year. Can it continue to do so and for how long? Current estimates of the number of Internet users run in the tens of millions, perhaps 50 M, and this might grow to one billion; thus a factor of twenty is available by increasing the number of people on the Web, but not more. Can people put more and more of their life online? Perhaps, but I suspect not more than another factor of 20. This suggests that the amount of Ascii on the Web might increase to 800 terabytes. Is there that much text around? What about images, movies, and sounds?

How much traditional information is there?

The 20-terabyte size of the Library of Congress is widely quoted and as far as I know is derived by assuming that LC has 20 million books and each requires 1 MB. Of course, LC has much other stuff besides printed text, and this other stuff would take much more space.

1. Thirteen million photographs, even if compressed to a 1 MB JPG each, would be 13 terabytes.
2. The 4 million maps in the Geography Division might scan to 200 TB.

11/28/2016

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3. LC has over five hundred thousand movies; at 1 GB each they would be 500 terabytes (most are not full-length color features).
4. Bulkiest might be the 3.5 million sound recordings, which at one audio CD each, would be almost 2,000 TB.

This makes the total size of the Library perhaps about 3 petabytes (3,000 terabytes).

Of course the most important discrepancy in comparing the Web and the Library of Congress is that the Library of Congress predominantly contains published materials. The Web has more text than LC already, if you only ask for English-language material written in the last 18 months. I tried to guess what fraction of Web material represents something that has been published, however, by sampling fifty random English-language URLs. I found fourteen which looked to me as if they were probably in a large conventional library, or 28%. By contrast most of the contents of Lexis-Nexis and Dialog are versions of published material, albeit much more easily searched.

What other kinds of traditional information might be around? The United States manufactures 38 million tons a year of the kind of paper used for writing and printing. If a typical pound of paper is 220 A4 pages and each sheet held 5000 bytes, that would be about 8,000 terabytes of text each year. Of course many of the sheets are copies of other sheets, and many of them do not contain words. How much could reasonably be written fresh? Suppose that half the pages have text and that we assume 100 copies of the average sheet; that would be 40 terabytes of fresh information. If 40 million U. S. 'knowledge workers' each wrote 1 megabyte a year, that would also be 40 terabytes a year. Since the US gross domestic product of \$7T is about one-quarter of the world GDP (\$30.8B) I will in general multiply the US by 4 to extrapolate to the earth, and suggest that the entire world's writing amounts to 160 terabytes each year. Of this the published books are about 863,000 (in 1991), plus 9,315 newspapers, [UNESCO 1995], making perhaps a terabyte of professionally written or refereed material, not even 1% of the total.

Other kinds of information, compared with Ascii text, are bulkier.

1. *Cinema*. There were 4,615 films made world-wide in 1989; at 5MB/sec and 7200 seconds average, that would be 166 terabytes.
2. *Images*. There are about 52 billion (thousand million) photographs taken each year in the world. [Mills 1996]. If each of those is a 10 KB JPG, that is 520,000 terabytes, or 520 petabytes, and these are actually all different. Again, less than 1% represent professionally taken or reviewed pictures, probably less than 0.1%. By comparison even the NASA earth observing project, expected to accumulate 11,000 terabytes, [Fargion 1996], doesn't affect the numbers.
3. *Broadcasting*. In the US, we have 1593 television stations. If each sends out 5 MB/sec for 30 million seconds per year, that is over 200 petabytes. However, one might expect that only about 1/10 of the programming is actually different for different stations; that is 20 petabytes of distinct programming, and extrapolated to the world would be 80 petabytes. Radio, by contrast, is insignificant: the US has 6,956 radio stations and if each sends out 30 million seconds per year at 8 KB/sec we would have only 1.7 TB in the United States.
4. *Sound*. Sales of recorded music in the US in 1992 were 407 million CDs and 336 million cassettes (and 20 million vinyl disks, still). Assuming 550 MB for each CD and cassette that would be 400 petabytes, much duplicated of course. If the number of different recordings for sale is about 30,000 this would be 15 terabytes in the US and 60 terabytes world-wide.
5. *Telephony* The largest storage requirement would come from converting all telephone conversations to digital form. In the US in 1994 there were 500 billion call-minutes of 'interlata toll' and there is about 20 times as much local calling, so at 56 kbits/sec this would be 4,000

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petabytes of digitized voice. The only thing I am not considering is consumer videotape, on the grounds that much of it is used to record off-the-air TV and duplicates the TV stations.

The conclusion is that in terms of text there are terabytes of information and perhaps one terabyte of professional information. Including sounds and images there are thousands of petabytes of information. The letter from Sincerbox which started all of this suggested that there would be 12,000 petabytes of information in the world, perhaps not an unreasonable guess. Only a small part of this, dominated by the TV stations, is commercially produced or validated in some way; perhaps that amounts to 100 petabytes.

How much computer storage space is there?

The single largest data storage system I have seen described is a year-old description of the Accelerating Strategic Computing Infrastructure project at Livermore, Los Alamos and Sandia Laboratories, which has 75 terabytes of disk, and a plan for hundreds of petabytes of tape archive. [Louis 1996]. The Los Alamos HD-ROM project using scanning electron microscopes to etch bits into stainless steel in a vacuum, which has been transferred to the startup company Norsam Technologies, has achieved 200 GB/square inch. They hope to put 12 terabytes on a single CD-size disk.

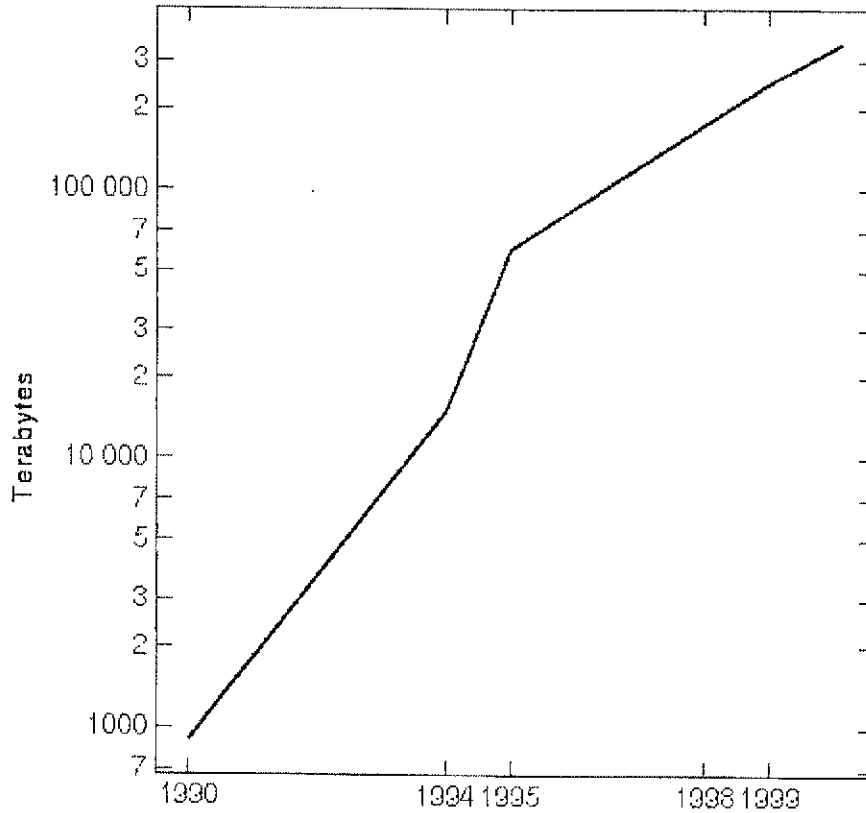
One way of guessing the total size of the world's computer storage is simply to view the single largest establishment as one point on a log-normal curve. To oversimplify, the largest city in the world has about 1/300 the population of the world, and the largest company in the world has about 1/300 the world's GDP. So this suggests that if the largest disk farm in the world in 1996 was 75 terabytes, the total disk space in the world was 22,500 terabytes.

Of course, there are statistics on the disk drive industry. The chart below makes a guess at how many terabytes of disk space are sold per year, using data from Computerworld, [Radding 1990], IBM, [Bell 1994], and Optitek. [Optitek]. The different uncoordinated sources for this table make it fairly irregular; I've been unable to find good numbers from a single source. But it is clear the answer today is tens of thousands of terabytes of disk sold each year.

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Disk space sold



Optitek predicts 1998 sales and capacities of different storage media:

Device	Price	Total market	Total size
Magnetic disk	\$100/GB	\$25B	250 petabytes
RAID disk	\$200/GB	\$13B	65 petabytes
Optical disk	\$20/GB	\$0.5B	25 petabytes
Optical jukeboxes	\$20/GB	\$5B	250 petabytes
Magnetic tape	\$1/GB	\$10B	10,000 petabytes
Tape stackers	\$1/GB	\$2B	2,000 petabytes

Both Alan Bell of IBM and Jim Gray of Microsoft estimate that 200 petabytes of tape storage were sold in 1995.

Note that these numbers added up are all comparable to the size of the numbers for the total amount of information in the world. So the implication is that in the year 2000 we will be able to save in digital form everything we want to - including digitizing all the phone calls in the world, all the sound recordings, and all the movies. We'll probably even be able to do all the home movies in digital form. We can save on disk everything that has any contact with professional production or approval.

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Soon after the year 2000 the production of disks and tapes will outrun *human* production of information to put on them. Most computer storage units will have to contain information generated by computer; there won't be enough of anything else.

Of course, this has already true despite the lower size of computer memory today. The typical computer disk byte is probably part of some Microsoft object module. After that, it's probably some kind of database. But we still see complaints that relatively little of the data in many large archives (the NASA files or the Palomar sky survey) has ever been looked at by anyone. That will be normal in the future: computer memory will be mostly for other computers. Today this memory is highly duplicative, with tens of millions of copies of popular programs. Tomorrow, with everyone on-line with high speed connections, and extended use of site license agreements, it may be common for PCs to fetch on demand object modules of software needed once in a while, as we already do at Bellcore. The disks on our machines will then be available for our own personal information. A fast author might write a megabyte a year; not even Trollope wrote 100 MB in his life; but we'll all have at least a gigabyte of personal storage by 2000, when we have about as many petabytes of disk sold as there are millions of computers in the world (300 each, roughly).

How much human memory is there?

And to look at a third measure, how much does human memory hold? Tom Landauer tried to estimate this some years ago and concluded that the brain held about 200 megabytes of information. [Landauer 1986]. He got this number partly by looking at the rate at which people could take in information, both by reading and by looking at pictures. He also studied estimates of the rate at which people forget things, and the amount of information adults need in order to do the tasks they normally do. His numbers (expressed in gigabits, not gigabytes), were 1.8, 3.4, 2.0, 1.4 and .5 gigabits. Averaging these and dividing by 8 yields 227 MB. Since there are between 10^{12} and 10^{14} neurons, this suggests that the brain contains 1,000 to 100,000 neurons for each bit of memory. Of course, much of the brain is used for perception, motor control, and the like; but even if only 1% of the brain is devoted to memory Landauer pointed out that it looks like your head accepts considerable storage inefficiency in order to be able to make effective use of the information.

With something like 6 billion people on earth, that makes the total memory of all the people now alive about 1,200 petabytes. To the accuracy with which these calculations are being done, the results are comparable. We can store digitally everything that everyone remembers. For any single person, this isn't even hard. Landauer estimated that people only take in and remember about a byte a second; a typical lifetime is 25,000 days or 2 billion seconds (counting time asleep). The result is 2 gigabytes, or something that fits on a laptop drive.

Would it be hard to remember every word you heard in your lifetime, including the ones you forgot? The average American spends 3,304 hours per year with one or another kind of media. [Census 1995]. 1,578 hours are with TV; adding in 12 hours a year of movies, at 120 words per minute that's 11 million words, perhaps 50 megabytes of Ascii. And 354 hours a year of reading newspapers, magazines and books at 300 words per minute reading speed would be another 32 megabytes of text. In seventy years of life you would be exposed to around six gigabytes of Ascii; today you can buy 23 gigabyte disk drives.

Could we simply make a wearable device that would record everything? Yes, if either (a) we had decent speech recognition and OCR, or (b) books move to electronic form and TV sets provide access to the closed-captioned Ascii form of the scripts. Perhaps both of these choices are likely in the near future. School children no longer need to do arithmetic without calculators; perhaps they will soon no

Exhibit 12

Exhibit 3

longer need to memorize anything either. If you think this is horrible remember that Plato (in the *Phaedrus*) suggested that writing would 'create forgetfulness in the minds of those who learn to use it' and would create 'the show of wisdom without the reality.' If writing something down isn't cheating, why is recording it? It is now common for speakers to use transparencies, for a conference to hand out printed proceedings, and for people to sit at talks with cassette recorders. Would it be that terrible if each attendee had a laptop doing speech recognition, and the laptop kept the transcript and provided a small vibration to wake up the attendee when a promising topic was mentioned?

Two years ago I heard Ted Nelson at a conference suggest that we should keep the entire record of everyone's life - all the home snapshots, videos and the like. Some six-year-old, he said, is going to grow up to be President; and then the historians will wish we knew absolutely everything about his or her life. The only way to do this is to save everything about everyone's life. I laughed, but it's indeed possible. Whether it is worthwhile is another question: are we better off having all possible information and giving it the most sketchy consideration, or having less information but trying to analyze it better? Computers do not use log tables, and chess computers have dictionaries of opening and endgame positions but not whole games. We need to understand our ability to model more complex situations to know how to make best use of stored information.

Conclusion

There will be enough disk space and tape storage in the world to store everything people write, say, perform or photograph. For writing this is true already; for the others it is only a year or two away. Only a tiny fraction of this information has been professionally approved, and only a tiny fraction of it will be remembered by anyone. As noted before the storage media will outrun our ability to create things to put on them; and so after the year 2000 the average disk drive or communications link will contain machine-to-machine communication, not human-to-human. When we reach a world in which the average piece of information is *never* looked at by a human, we will need to know how to evaluate everything automatically to decide what should get the precious resource of human attention.

Today the digital library community spends some effort on scanning, compression, and OCR; tomorrow it will have to focus almost exclusively on selection, searching, and quality assessment. Input will not matter as much as relevant choice. Missing information won't be on the tip of your tongue; it will be somewhere in your files. Or, perhaps, it will be in somebody else's files. With all of everyone's work online, we will have the opportunity first glimpsed by H. G. Wells (and a bit later and more concretely by Vannevar Bush) to let everyone use everyone else's intellectual effort. We could build a real 'World Encyclopedia' with a true 'planetary memory for all mankind' as Wells wrote in 1938. [Wells 1938]. He talked of "knitting all the intellectual workers of the world through a common interest;" we could do it. The challenge for librarians and computer scientists is to let us find the information we want in other people's work; and the challenge for the lawyers and economists is to arrange the payment structures so that we are encouraged to use the work of others rather than re-create it.

Acknowledgment.

This paper was suggested by a query from Glenn Sincerbox of the University of Arizona.

* Here are the names of the units of very large storage sizes:

gigabyte 1,000 megabytes

terabyte 1,000 gigabytes

Exhibit 12

Exhibit 3

petabyte 1,000 terabytes
exabyte 1,000 petabytes

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Exhibit 12

Exhibit 3

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

A PERFECT CAUSE 2013, INC.)
(d.b.a. A PERFECT CAUSE); THE)
OKLAHOMA OBSERVER;)
)
Plaintiffs,)
)
vs.)
)
MARY FALLIN, in her official capacity)
as GOVERNOR OF THE STATE OF)
OKLAHOMA;)
)
Defendant.)

FEB - 9 2017
RICK WARREN
COURT CLERK
40 _____

Case No. CV-2015-2098
Judge Roger Stuart

JOURNAL ENTRY

This matter came for hearing on February 3, 2017 before the Court on Plaintiffs' Motion for Summary Judgment. The Court also considered Defendant's Response in Objection to Plaintiffs' Motion for Summary Judgment, and oral argument by both parties' counsel. Plaintiffs appeared by and through attorneys of record, Brady R. Henderson and Ryan Kiesel, of the ACLU of Oklahoma Foundation. Defendant appeared by and through counsel of record, Assistant Attorney General Jeb Joseph, of the Oklahoma Attorney General's Office.

After reviewing the filings of the parties, and after hearing oral argument, the Court finds that Plaintiffs' Motion for Summary Judgment should be DENIED.

IT IS SO ORDERED this 8 day of February, 2017.

ROGER STUART
HONORABLE ROGER H. STUART
Judge of the District Court

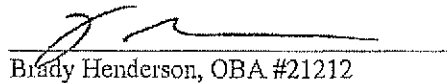
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AS FILED OF RECORD
IN DISTRICT COURT

FEB - 9 2017
RICK WARREN COURT CLERK
Oklahoma County
Rick Warren

APPROVED AS TO FORM:



Jeb Joseph, OBA #19137
Assistant Attorney General
Oklahoma Attorney General's Office
Litigation Division
313 N.E. 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-22491
Facsimile: (405) 521-4518
Electronic Mail: jebjoseph@oag.ok.gov
Counsel for Defendant



Brady Henderson, OBA #21212
Ryan Kiesel, OBA #21254
ACLU of Oklahoma Foundation
3000 Paseo Drive
Oklahoma City, OK 73103
Telephone: (405) 524-8511
Facsimile: (405) 524-2296
Electronic Mail: bhendersonaclu@gmail.com
Attorneys for Plaintiffs

IN THE DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

A Perfect Cause
Plaintiff(s)
Mary Fallin
Defendant(s)

Case No. CV-15-2098

SCHEDULING ORDER

THIS ORDER is entered this day of 2015; Counsel have discussed discovery needed, the complexity of the case, and their caseload in arriving at this agreed Scheduling Order.

IT IS ORDERED THAT THE FOLLOWING MUST BE COMPLETED WITHIN THE TIME FIXED:

- 1. JOINDER OF ADDITIONAL PARTIES and AMENDMENT TO THE PLEADINGS: Filed only with leave of Court or written consent of opposing parties. (12 O.S. § 2015).
2. DISCOVERY: Completed/answered by Pretrial unless otherwise agreed and approved by the Court.
3. FINAL LIST OF WITNESSES AND EXHIBITS: Preliminary witness/exhibit lists shall be exchanged no later than 60 days prior to the Pretrial; Final exchange - 30 days prior to Pretrial; Additional witnesses/exhibits shall be stricken by the Court, absent extraordinary circumstances. Exhibits, including demonstrative exhibits, must be exchanged 10 days prior to trial. Failure to comply with this paragraph will result in the exclusion of witnesses/exhibits at trial.
4. ALL MOTIONS INCLUDING DISPOSITIVE MOTIONS: Filed 60 days prior to Pretrial.
5. MOTIONS IN LIMINE: Served no later than 5 days prior to trial; Set for hearing/decided no later than the Friday before trial, unless otherwise directed by the Court.
6. RULINGS ON OBJECTIONS TO TRIAL DEPOSITIONS (Local Rule 18): Parties shall provide Designation of Deposition Testimony to opposing parties no later than 40 days before trial; Objections shall be served no later than 30 days before trial; Set for hearing/decided no later than 20 days before trial.
7. OBJECTION TO EXPERT TESTIMONY: Objections to expert witnesses shall be included in the Pretrial Conference Order; The Court will set a briefing schedule and a Daubert hearing date at the Pretrial.
8. MEDIATION: Completed by Pretrial Conference, unless otherwise approved by the Court.
9. PRETRIAL CONFERENCE DATE & TIME: July 26 2015 @ 9
10. JURY: NON-JURY: X If not already paid, party requesting jury trial shall pay jury fee (28 O.S. § 152.1.) ESTIMATED TIME FOR TRIAL: (days/weeks).
11. TRIAL DATE: TO BE SET AT PRETRIAL CONFERENCE/
12. REQUESTED JURY INSTRUCTIONS: File a complete set with verdict forms on Friday by Noon before the first day of trial; Email your set to the Court's bailiff, unless otherwise directed by the Court.
13. TRIAL BRIEF/PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW: At Court's request.
14. MEDICAL EXAMINATION: (Name) SHALL BE COMPLETED no later than Party/Counsel requesting medical examination SHALL PROVIDE a copy of report to Parties/Counsel within 10 days following the exam or by
15. PRETRIAL CONFERENCE ORDER: Agreed to & delivered to the Court at Pretrial along with 1 copy for the Court. DO NOT FILE individual or unsigned original Pretrial Conference Orders with the Court Clerk.

IT IS FURTHER ORDERED: Failure to comply with the requirements set forth in paragraphs 4, 5, 6, & 7 waives the legal issue or objection. This schedule may be modified only upon written motion in compliance with Local Rule 20, for good cause shown and by Order of this Court prior to the dates scheduled. Failure to comply with this Order may result in sanctions pursuant to Rule 5 (J) of the Rules of the District Courts. FAILURE TO APPEAR AT PRETRIAL CONFERENCE MAY RESULT IN THE ENTRY OF A DEFAULT JUDGMENT OR DISMISSAL ORDER, AT THE COURT'S DISCRETION, WITHOUT FURTHER NOTICE TO THE PARTIES.

JUDGE OF THE DISTRICT COURT

Attorney for Plaintiff(s) /OBA #
Printed Name / Phone #
Email

Attorney for Defendant(s) /OBA #
Printed Name/Phone #
Email

A copy of this Order was delivered to counsel of record/pro se party on the day of 2015.

Deputy Court Clerk