

FILED IN DISTRICT COURT
OKLAHOMA COUNTY
IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

NOV - 9 2015

TIM RHODES
COURT CLERK

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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.)

Case No: CV-2015-2098

Assigned Judge: Stuart

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATION OF
THE OKLAHOMA OPEN RECORDS ACT

COME NOW, A Perfect Cause 2013, Inc. and The Oklahoma Observer, Plaintiffs herein, by and through their attorneys of record, Brady R. Henderson and Ryan Kiesel of the American Civil Liberties Union of Oklahoma Foundation, and pursuant to 51 O.S. §24A.17(B), hereby petition this Honorable Court to temporarily and permanently enjoin the defendant public official named herein, as well as her respective agents and agencies, from continuing to deny access to specific public records in violation of the Oklahoma Open Records Act (51 O.S. §§24A.1-24A.29). In support of said Petition, Plaintiff alleges and states the following:

PARTIES

1. Plaintiff A Perfect Cause 2013, Inc. (d.b.a. and hereinafter A Perfect Cause) is a domestic, not for profit corporation striving to produce safe and appropriate care with dignity for nursing home patients and residents across America. A Perfect Cause, Inc. and its agents regularly engage in public advocacy for Oklahoma's seniors and disabled, focusing on combatting neglect and abuse of some of the state's most vulnerable citizens.

2. The Founder of A Perfect Cause is Wes Bledsoe. He is duly authorized to act on behalf of the organization.
3. Plaintiff The Oklahoma Observer is a domestic, for-profit publication owned by Oklahoma-based AHB Enterprises, LLC. The Oklahoma Observer was established on October 9, 1969, to provide critical oversight of public figures and officials, and a means for Oklahomans to reach informed opinions about issues of common concern. The distribution of some reports and editorials produced by The Oklahoma Observer is supported by the Oklahoma Observer Democracy Foundation, a foundation designated as a 501(c)3 non-profit on July 17, 2014, to provide free access to reporting on and analysis of public policy issues via the okobserver.net website.
4. The Editor of The Oklahoma Observer, and principal member of AHB Enterprises, LLC, is Arnold Hamilton. He is duly authorized to act on behalf of The Oklahoma Observer.
5. Both Plaintiffs (and respective agents thereof) are persons within the meaning of the Oklahoma Open Records Act (51 O.S. §§24A.1-24A.28), and therefore entitled to inspect public records.
6. Defendant Mary Fallin, Governor of the State of Oklahoma (hereinafter "Governor Fallin") is an elected official subject to the requirements of the Oklahoma Open Records Act (51 O.S. §§24A.1-24A.28), as a public official.

JURISDICTION AND VENUE

7. Both Plaintiffs are incorporated in Oklahoma and maintain their principal place of business in Oklahoma County, Oklahoma.
8. Defendant Fallin's place of residence and her place of public office are both located in Oklahoma City, Oklahoma, within the boundaries of Oklahoma

County. The records maintained by the Governor's Office are maintained or can be accessed from Oklahoma County, Oklahoma.

RELEVANT FACTS

9. Cecilia Smith, Director and agent of A Perfect Cause, filed an Open Records request with the Office of Governor Fallin. A copy of the request is attached as Exhibit A.
10. The request from A Perfect Cause, Inc. was received by the Governor's Office on May 13, 2014.
11. Arnold Hamilton, Editor of the Oklahoma Observer, filed an Open Records request with the Office of Governor Fallin. A copy of the request is attached as Exhibit B.
12. The request from the Oklahoma Observer was received by the Governor's Office on July 16, 2014.
13. As of the date of this filing, Governor Fallin has failed to produce or allow inspection of any of the records requested by the Plaintiffs.
14. The Governor's Office did send a purported response to the Oklahoma Observer on or about October 7, 2015. However, it neither facially nor substantively addressed its request, instead containing records for an entirely different set of requests made by some other media organizations, but not responsive to the Oklahoma Observer's request in any way.
15. On information and belief, as of the time of this filing, the Governor's Office has yet to begin the substantive processing of either Plaintiff's request.
16. On information and belief, Defendant Fallin maintains an Open Records Act compliance procedure in which all requests (including those of Plaintiffs) are

handled in the order in which they are received, but in which some requests, if similar or identical, are consolidated.

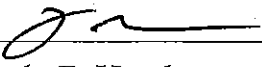
17. On information and belief, this system causes a request (unless identical or substantially the same as a previous request) not to be processed or complied with until after all previously received requests have been completed.
18. On information and belief, the Governor's Office process involves unnecessary actions either designed to, or having the effect of, delaying production of public records sought under the Oklahoma Open Records Act.
19. On information and belief, the extraneous steps alleged above include, but are not necessarily limited to:
 - a. Rescanning digital records (such as emails and pdf documents) into non-searchable optically scanned images via either digital conversion or physically printing hard copies of digital documents and then physically scanning the hard copies with an optical scanning device.
 - b. Sending all or nearly all documents through inspection by legal staff regardless of the probability of those documents containing privileged information.
 - c. Failing to segregate confidential or privileged records during normal record keeping, creating the need for the extra legal review described above.
 - d. Involving gubernatorial legal or executive staff in Open Records requests received by other public agencies, thus diverting staff time from the Governor's duty of compliance.
 - e. Reviewing documents not just for claims of legal privilege, but also for political sensitivity or for other non-legal reasons.

CAUSE OF ACTION AND PRAYER FOR RELIEF

20. The Oklahoma Open Records Act, 51 O.S. §§24A.1-24A.29, both expresses and effects "the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government." 51 O.S. §24A.2.
21. Pursuant to this public policy, the stated purpose of the Oklahoma Open Records Act "is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power." 51 O.S. §24A.2.
22. The Oklahoma Open Records Act, to effect the above purpose, mandates, "All records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction..." 51 O.S. §24A.5. As such, it imposes an affirmative and legally cognizable duty on the Defendant to allow public access to the records within her respective possession or control.
23. While the Oklahoma Open Records Act does not give an exact time required for compliance, it does mandate that a public body "must provide prompt, reasonable access to its records..." 51 O.S. §24A.5(5).
24. The denial of access to records for a period in excess of seventeen months and fifteen months, respectively, is neither prompt nor reasonable.
25. Pursuant to 51 O.S. §24A.17(B), Plaintiffs request injunctive relief be granted via judicial order for the immediate or re release of all responsive records to their respective requests.
26. Plaintiff further prays that the Court grant Plaintiff a judgment for reasonable attorney fees in this action, as Plaintiff is entitled by 51 O.S. §24A.17(B)(2), upon successful determination of the action on the merits.

WHEREFORE, premises considered, Plaintiffs pray this Honorable Court grant the aforementioned relief as requested. Plaintiffs reserve the right to supplement and/or amend this pleading if necessary to conform to any subsequently ascertained evidence.

Respectfully Submitted,

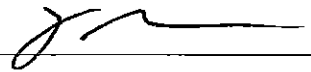


Brady R. Henderson, OBA#21212
Ryan Kiesel, OBA#21254
ACLU of Oklahoma Foundation
3000 Paseo Drive
Oklahoma City, OK 73103
(405) 524-8511, (405) 524-2296 (fax)
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that on the day of filing, a true and correct copy of the above and foregoing was delivered to the following:

The Honorable Mary Fallin,
Governor of the State of Oklahoma
Oklahoma State Capitol
2300 N. Lincoln Blvd., Room 212
Oklahoma City, OK 73105



Brady R. Henderson

VERIFICATION

STATE OF OKLAHOMA)
) ss.
County of Oklahoma)

Wes Bledsoe, being of lawful age and first duly sworn upon oath, deposes and states:

1. I, Wes Bledsoe, am duly authorized to act on behalf of A Perfect Cause, Inc., a domestic not for profit corporation.
2. That I have read the above and foregoing Petition and am familiar with the contents thereof.
3. That the allegations stated therein are true and correct to the best of my knowledge.

Wes Bledsoe
Wes Bledsoe,
A Perfect Cause, Inc.

Subscribed and sworn before me this 9th day of November, 2015.

Bryan Newell
NOTARY PUBLIC



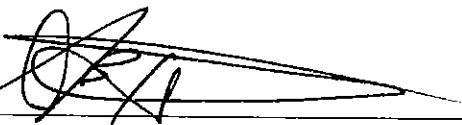
My Commission Number: 12011273
My Commission Expires: 11/29/2016

VERIFICATION

STATE OF OKLAHOMA)
) ss.
County of Oklahoma)

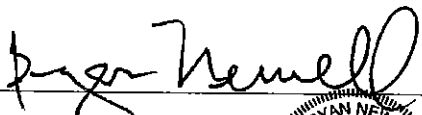
Arnold Hamilton, being of lawful age and first duly sworn upon oath, deposes and states:

1. I, Arnold Hamilton, am duly authorized to act on behalf of the Oklahoma Observer, a newspaper operated by a domestic for-profit corporation.
2. That I have read the above and foregoing Petition and am familiar with the contents thereof.
3. That the allegations stated therein are true and correct to the best of my knowledge.

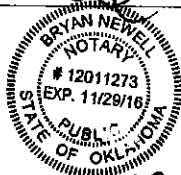


Arnold Hamilton
The Oklahoma Observer

Subscribed and sworn before me this 9th day of November, 2015.



NOTARY PUBLIC



My Commission Number: 12011273

My Commission Expires: 11/29/16

Governor Mary Fallin
State of Oklahoma
State Capitol Building
2300 N. Lincoln, Suite 212
Oklahoma City, OK 73105



May 13, 2014

**REQUEST FOR DISCLOSURE AND INSPECTION OF PUBLIC RECORDS
PURSUANT TO THE OKLAHOMA OPEN RECORDS ACT**

Pursuant to the Oklahoma Open Records Act, 51 O.S. §§24A.1-24A.29, we hereby request that the following records be made available for inspection and duplication at our election:

1. Any and all records of communications regarding nursing homes, nursing home operators, long term care facilities, long term care providers, or any issues or concerns with the same, between the Governor or her subordinates and:
 - a. Representatives of Oklahoma's nursing home industry, including but not limited to, long term care providers, nursing home owners, operators, administrators, staff, association representatives, and lobbyists;
 - b. The Oklahoma Department of Health, or any agents, employees, or officials thereof,
 - c. The Oklahoma Department of Human Services, or any agents, employees, or officials thereof,
 - d. The Oklahoma State Long Term Care Ombudsman, or any agents, employees, or officials thereof,
 - e. The Oklahoma Health Care Authority, or any agents, employees, or officials thereof,
 - f. The Oklahoma Attorney General, or any agents, employees, or officials thereof, OR
 - g. The Oklahoma Medicaid Fraud Unit, or any agents, employees, or officials thereof.

2. Any and all records of communications regarding issues, disputes, or complaints concerning the following state officials in the performance of their duties:
 - a. Terry Cline
 - b. Hank Hartsell
 - c. Dorya Huser
 - d. Ed Lake
 - e. Barbara Kidder
 - f. Jeannine McCullough
 - g. Esther Houser

3. Any and all records of communications regarding nursing homes and other long term care service providers between the Governor or her staff or agents and any state agencies, citizens, or advocacy groups.

4. Any and all records of communications with A Perfect Cause or Wes Bledsoe, its founder.

5. Any and all records of communications regarding or referring to A Perfect Cause or Wes Bledsoe, its founder.

6. Any and all records of communications with Fern Horton.

Exhibit "A"

7. Any and all records of communications regarding or referring to Fern Horton.

All the above requests refer only to records from January 1, 2011 to the present.

Please note that we are asking to inspect these records. We reserve, however, the right to request copies when the records are examined. For any records falling into the scope of this request that also contain confidential information or information otherwise outside the scope of required disclosure under the Oklahoma Open Records Act, we hereby request that reasonably segregable portions be provided, as outlined in 51 O.S. §24A.5(2). Likewise, we hereby request that you provide a list or log of any and all responsive records withheld under any claim of legal privilege or exemption from the Oklahoma Open Records Act.

The Oklahoma Open Records Act prohibits the charging of a search fee when the release of the "documents 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." A Perfect Cause is an organization of Oklahoma taxpayers whose inquiry in this matter is made for precisely the public interest purpose laid out above.

Should any part of this request be denied, we hereby request a written response asserting the specific exemption or privilege that you believe allows the denial of each specific record withheld.

Responses to this request should be directed to Cecilia Smith, Director, A Perfect Cause, 7704 Northgate, Oklahoma City, OK 73262.

Thank you in advance for your prompt reply.

Sincerely,

Cecilia Smith
Director
A Perfect Cause
7704 Northgate
Oklahoma City, OK 73262



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,

A handwritten signature in black ink, appearing to read 'A. Hamilton', is written over a horizontal line.

Arnold Hamilton
Editor

Exhibit "B"

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return this card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Address</p> <p>X <i>Kandi Batts</i></p>
<p>1. Article Addressed to:</p> <p><i>THE HONORABLE MARY FALLIN 212 STATE CAPITOL BLDG 2300 N. LINCOLN BLVD. OKLA CITY, OK 73105-4890</i></p>	<p>B. Received by (Printed Name) C. Date of Delivery</p> <p><i>Kandi Batts</i></p>
<p>2. Article Number (Transfer from service label)</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>PS Form 3811, July 2013</p>	<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> <p style="text-align: center;">7010 1870 0003 5048 8927</p> <p style="text-align: center;">Domestic Return Receipt</p>