



OFFICE OF THE ATTORNEY GENERAL
STATE OF OKLAHOMA

November 25, 2025

Via email

Oklahoma Attorney General
c/o Traci Ballard, Deputy General Counsel
(traci.ballard@oag.ok.gov)

Re: Public Access Counselor Complaint No. 2025-040

Dear Counsel,

This is an official advisement regarding the above-referenced complaint ("Complaint") submitted to this office pursuant to 51 O.S.Supp.2025, § 24A.40. The Public Access Counselor ("PAC") received the Complaint on September 4, 2025, from Gitanjali Gutierrez representing the American Civil Liberties Union ("ACLU"). The Complaint alleges that the Oklahoma Attorney General ("OAG") improperly denied a request under the Oklahoma Open Records Act ("ORA") for documents related to the OAG's consideration of seeking certification for the expedited review process available for capital cases under 28 U.S.C. § 2265. The ACLU made three requests on this subject, and the parties agree that the OAG fully complied with two, leaving only the following request for records in dispute:

Any internal AG Office memorandum and communications regarding an existing or possible certification request, as well as minutes or notes of any meetings or discussions whatsoever regarding the process or application for a certification request, as well as appointment calendars reflecting the times and dates of any meetings where an existing or possible certification request was discussed (including a complete list of attendees), as well as phone or virtual meeting recordings wherein an existing or possible certification request was discussed (including a complete list of participants), collectively ("internal certification communications").

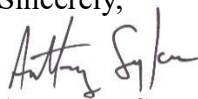
Per the terms of 51 O.S.Supp.2025, § 24A.40(F), I conducted an initial review and determined the Complaint warranted a response from the OAG. In its response, the OAG argues that it properly withheld records responsive to this request based on the confidentiality provisions of 51 O.S.Supp.2025, § 24A.5(1)(a) (attorney work product), 51 O.S.2021, § 24A.9 (public official's personal notes), and 51 O.S.2021, § 24A.12 (OAG litigation files), and the deliberative process privilege available to executive branch officials, as recognized in *Vandelay Entm't, LLC v. Fallin*, 2014 OK 109, 343 P.3d 1273.

Upon review of the records provided by the OAG and consideration of the OAG's response, I have determined the following:

1. The primary records sought through the above-quoted request—internal memos, communications, and minutes or notes of meetings—would reflect discussion amongst OAG staff leading up to a determination as to whether the OAG would seek certification under 28 U.S.C. § 2265.
2. The memos and communications sought by the ACLU may reasonably be withheld based on the Attorney General's executive privilege, as set forth in *Vandelay*, 2014 OK 109, ¶¶ 20-25, 343 P.3d at 1277-19.
3. Notes of meetings may reasonably be withheld as personal notes or personally created materials of public officials, as provided in 51 O.S.2021, § 24A.9.
4. Each of these categories may also be reasonably withheld under 51 O.S.Supp.2025, § 24A.5(1)(a) as attorneys' opinion work product, which is entitled to the highest level of protection from discovery. *Atchison v. City of Tulsa*, 344 F.R.D. 28, 35 (N.D. Okla. 2023). The OAG may reasonably anticipate litigation with regard to its work in capital cases and may maintain the confidentiality of its attorneys' mental impressions and work product accordingly.
5. Finally, with regard to calendar entries or recordings of meetings, it is my understanding that no such documents were located after a reasonable search.

Based on the information available to me at this time, I conclude that the OAG has a good faith legal basis to deny access to the information and records referenced in the Complaint. Under 51 O.S.Supp.2025, 24A.40(G), no further response is required. If you have any questions, please do not hesitate to contact me at (405) 522-2771 or by email at opengov@oag.ok.gov.

Sincerely,



ANTHONY SYKES
Assistant Attorney General
Public Access Counselor

cc: Gitanjali Gutierrez (via email)