

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

OCT 26 2016

RICK WARREN
COURT CLERK

26 _____

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

Plaintiffs,

v.

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

Defendants.

Case No. CV-14-2372
Judge Bryan Dixon

**MOTION TO COMPEL THE GOVERNOR TO SEARCH FOR AND PRODUCE EMAIL
RECORDS MAINTAINED ON NON-GOVERNMENTAL EMAIL ACCOUNTS AND/OR
SERVERS THAT ARE RESPONSIVE TO PLAINTIFFS' OPEN RECORDS REQUEST**

Dated: October 26, 2016

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Dustin Racioppi, *Christie's personal email must be searched, judge rules*, NorthJersey.com (Sep. 9, 2016), archived at <https://perma.cc/54QL-XKWP> 5

Plaintiffs Ziva Branstetter (“Branstetter”) and BH Media Group Inc. d/b/a *Tulsa World* (“*Tulsa World*”) (collectively, “Plaintiffs”) respectfully submit this motion for an order compelling Defendant Mary Fallin, in her official capacity as Governor of the State of Oklahoma, (“Fallin” or the “Governor”) to search for and release all email records responsive to Plaintiffs’ May 1, 2014 request under the Oklahoma Open Records Act, Okla. Stat. tit. 51, §§24.A.1, *et seq.* (“ORA”), that are stored on non-governmental servers or in non-governmental email accounts—including but not limited to all responsive emails sent to or from maryfallin@sbcglobal.net, aweintz@gmail.com, and Steve Mullins’s personal email account. In support of their Motion, Plaintiffs state the following:

INTRODUCTION

Under the ORA, public records are not defined by their format, location, or method of transmission, but rather by their content and, specifically, their relationship to the public’s business. ORA § 24A.3. Plaintiffs’ May 1, 2014 ORA request to the Governor’s Office expressly sought email records concerning the State’s executions of Clayton Lockett and Charles Warner regardless of whether those emails were located “on a *personal email account* or state email account[.]” First Am. Pet. ¶ 23, Ex. A (“May 1 ORA Request”) (emphasis added).

Based on the records released to Plaintiffs in response to their May 1 ORA Request, as well as the Governor’s responses to limited discovery in this matter, it is clear that (1) Governor Fallin and at least two members of her staff have used non-governmental email accounts to conduct public business and (2) that the Governor’s Office did not search non-governmental email accounts or servers for records responsive to Plaintiffs’ May 1 Request. The Governor’s failure to search for and release those email records violates the ORA. Accordingly, Plaintiffs respectfully request that this Court order the Office of the Governor to conduct a search for, and

to release to Plaintiffs, all email records responsive to Plaintiffs' May 1 ORA Request that are maintained on non-governmental email accounts or servers.¹

BACKGROUND FACTS AND PROCEDURAL HISTORY

On May 1, 2014, almost two and a half years ago, Plaintiffs submitted an ORA request to the Governor's Office for public records, including emails, relating to the executions of Clayton Lockett and Charles Warner. First Am. Pet. ¶ 23 & Ex. A. Branstetter agreed to limit the request to emails between certain persons within the Governor's Office, and specifically stated that her request applied to all such emails, regardless of whether they were located "on a *personal email account* or state email account[.]" *Id.* (emphasis added).

More than seven months later the Governor's Office had yet to produce any records in response to Plaintiffs' request. *Id.* at ¶ 27. On December 22, 2014, Plaintiffs filed the above-captioned lawsuit. *Id.* On October 8, 2015, approximately seventeen months after the May 1 ORA Request was submitted, the Governor's Office released several thousand pages of records, many in heavily redacted form, purportedly in response to Plaintiffs' request. *Id.* at ¶ 28.

Following limited written discovery, Plaintiffs filed a motion for leave to file an amended petition, which was granted by the Court on April 28, 2016. Plaintiffs' Amended Petition was filed on May 2, 2016. Governor Fallin filed an Answer to Plaintiffs' Amended Petition on August 30, 2016, and filed an Amended Answer on September 19, 2016.

¹ This motion is being submitted concurrently with Plaintiffs' separate motion requesting that the Court conduct an *in camera* review to determine the propriety of Defendants' withholding of certain public records in whole or in part in response to the three ORA requests at issue in this case. By these two motions, Plaintiffs seek to resolve outstanding issues concerning the records released to Plaintiffs in response to those ORA requests in advance of any evidentiary hearing on Plaintiffs' allegations that Defendants failed to provide Plaintiffs with "prompt, reasonable access" to requested records in violation of the ORA.

ARGUMENT

I. The Governor's Office failed to search for or release records stored on non-governmental email accounts or servers.

The ORA's mandate is explicit: "All records of public bodies and public officials shall be open to any person" for inspection or copying. ORA § 24A.5 (emphasis added). "Record" is defined broadly in the statute to include any 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.

ORA § 24A.3. Emails that meet the definition of a record must be produced in response to an ORA request, unless they are specifically exempt. *See id.*; 2001 OK AG 46.

As the statutory language makes clear, the method by which emails are drafted, transmitted, or stored has no bearing on whether they are "records" subject to the ORA. And both the Oklahoma Attorney General and courts from jurisdictions around the nation have concluded that government officials cannot circumvent public records laws by using non-governmental servers, email accounts, cellphones, or the like.

In 2009, the Oklahoma Attorney General issued an opinion explaining that the broad definition of "record" in Section 25A.3 "makes no distinction based on who owns or pays for a communication device and the services associated with it; rather, the ORA concentrates on who creates, receives, controls, or possesses a record[.]" 2009 OK AG 12. Accordingly, "a communication that meets the definition of a record under the ORA is subject to disclosure regardless of whether it is created or received on a publicly or privately owned personal electronic communication device, unless some provision of law allows it to be kept confidential." *Id.* To determine otherwise, as the Attorney General noted, "would allow public

officials and employees to circumvent the open records laws simply by using privately owned personal electronic communication devices to conduct public business.” *Id.*

Courts at both the federal and state level have come to the same conclusion. For example, the U.S. Court of Appeals for the D.C. Circuit recently held that “an agency cannot shield its records from search or disclosure under [the federal Freedom of Information Act] by the expedient of storing them in a private email account controlled by the agency head[.]” *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 146 (D.C. Cir. 2016). In that case, an agency argued that it did not need to search an agency head’s non-governmental email account in response to a records request because it was “beyond the reach of FOIA[.]” *Id.* at 147. That position that was soundly rejected by the court, which held that “[i]f the agency head controls what would otherwise be an agency record, then it is still an agency record and still must be searched or produced.” *Id.* at 149.

State courts have likewise determined that using non-governmental accounts or hardware for electronic communications does not place those communications beyond the reach of public records laws. *See, e.g., O’Neill v. City of Shoreline*, 170 Wash. 2d 138, 150, 240 P.3d 1149, 1155 (2010) (holding a search of public official’s home computer for email records related to city business was necessary to comply with a records request); *Bradford v. Dir., Employment Sec. Dep’t*, 83 Ark. App. 332, 345, 128 S.W.3d 20, 28 (2003); (“The creation of a record of communications about the public’s business is no less subject to the public’s access because it was transmitted over a private communications medium than it is when generated as a result of having been transmitted over a publicly controlled medium.”); *Mollick v. Twp. of Worcester*, 32 A.3d 859, 872–73 (Pa. Comm. Ct. 2011) (holding emails that meet the definition of “record” under the public records law are “records” regardless of whether they are stored on public

employees' "personal computers or in their personal email accounts[.]"). Indeed, just weeks ago, a trial court in New Jersey ruled that Governor Chris Christie's non-governmental email accounts must be searched to comply with a public records request from a local reporter or, alternatively, that the state must certify that those accounts have already been searched and that no responsive records were located. See Dustin Racioppi, *Christie's personal email must be searched, judge rules*, NorthJersey.com (Sep. 9, 2016), archived at <https://perma.cc/54QL-XKWP>. In that case, Judge Jacobson also ordered a search of non-governmental email accounts of employees of Governor Christie's administration. *Id.*

Here, Plaintiffs specifically requested emails from the Governor regarding the executions of Clayton Lockett and Charles Warner residing on both official governmental *and* non-governmental (*i.e.*, "personal") email accounts. First Am. Pet. ¶ 23 & Ex. A. To be clear, there is no doubt that Governor Fallin uses a non-governmental email account to conduct the public's business. In an August, 2014 email from Alex Weintz (the Governor's former Communications Director) to Steve Mullins (the Governor's former General Counsel), Denise Northrup (the Governor's Chief of Staff) and Audrey Rockwell (a secretary/paralegal in the Governor's Office), Mr. Weintz explained that:

The governor has two email addresses: a 'dot gov' email address and a personal email address. *Most of her emails are from the personal email address.* Those emails that are related to official business on either account are subject to the Open Records act.²

(emphasis added). A true and correct copy of that email as produced to Plaintiffs is attached as Exhibit A. Based on a February, 2013 email from Governor Fallin to Mr. Weintz, Ms. Northrup,

² In a separate email that was sent to Plaintiff Branstetter and her then-*Tulsa World* colleague Cary Aspinwall, Mr. Weintz confirmed that Governor Fallin uses a personal email address and stated: "We do not believe an email is exempt from the Open Records act simply because it was sent on a private account." Supplemental RFP #10, p. 320.

and Mr. Mullins produced to Plaintiffs in discovery, that personal email address appears to be maryfallin@sbcglobal.net. A true and correct copy of the February 2013 email as produced to Plaintiffs by the Governor's Office is attached as Exhibit B.

Examples of Governor Fallin's use of maryfallin@sbcglobal.net to conduct public business are numerous. As the Governor admits, First Am. Ans. of Governor Mary Fallin ¶ 26, on June 24, 2014, Alex Gerszewski, then-Deputy Press Secretary for the Governor, sent to the Governor at her maryfallin@sbcglobal.net email address a copy of a *Tulsa World* article written by Plaintiff Branstetter and Ms. Aspinwall regarding the State's failure to conduct autopsies on the majority of inmates executed since 1990. A true and correct copy of that email as produced to Plaintiffs is attached as Exhibit C.³ The Governor also used the same non-governmental email account to communicate with her staff about news articles critical of her handling of public issues. See Ex. B. Moreover, while the Governor's Office has redacted, in a clear effort to conceal, an email address associated with Governor Fallin in many of the records released in response to Plaintiffs' May 1 ORA Request, it is clear that the email address is a non-governmental (*i.e.*, not a ".gov" email address) used by the Governor. And, based on a comparison of one such redaction with an unredacted example of Governor Fallin's use of the maryfallin@sbcglobal.net email address, which is reproduced immediately below, Plaintiffs believe it is highly likely that the redactions are of the same non-governmental email address. True and correct copies of those emails, as produced to Plaintiffs, are attached as Exhibits B and D:

³ In her First Amended Answer, the Governor takes the novel—and evasive—approach of attempting to “neither admit[] nor den[y] the allegations in ¶¶79, 80” concerning her use of a non-governmental email account. Under the Oklahoma Rules of Civil Procedure, a party is required to admit or deny an averment, or state that they are without knowledge or information sufficient to form a belief as to its truth. Okla. Stat. tit. 12, § 2008(A)(2). Allegations are deemed admitted when not denied in a responsive pleading. *Id.* § 2008(D).

maryfallin@sbcglobal.net (Reproduced from Exhibit B)

maryfallin[REDACTED], (Reproduced from Exhibit D)

This redacted email address is reflected on a number of public records released by the Governor's Office in response to Plaintiffs' May 1, 2014 ORA Request.⁴ The Governor has also used a nongovernmental email address that begins with "Maryfallin@[redacted]" while conducting other government business; that address has appeared in public records produced to Plaintiff Branstetter in response to a different ORA requests. A true and correct copy of one such email, as produced by the Governor's Office, is attached as Exhibit E. It is not clear whether the redacted email address it contains is "maryfallin@sbcglobal.net" or another account used by the Governor.

In addition to the Governor's unofficial account(s), according to emails produced to Plaintiffs by the Governor's Office it appears that at least two other employees of the Governor's Office—Mr. Weintz and Mr. Mullins—also used non-governmental email accounts to conduct public business. Mr. Weintz used aweintz@gmail.com. True and correct copies of emails reflecting his use of that email account, as produced to Plaintiffs, are attached as Exhibit F. The first part of Mr. Mullins's non-governmental email account, is "mullins[redacted]" which appears in the records produced in response to Plaintiffs' ORA request to the Governor's Office and is confirmed by its Redaction Log. True and correct copies of emails reflecting Mr. Mullin's

⁴ Because non-governmental email addresses associated with Governor Fallin are redacted in records produced to Plaintiffs in response to their May 1 ORA Request, it is impossible for Plaintiffs to determine conclusively whether she uses other non-governmental email accounts, in addition to maryfallin@sbcglobal.net, to conduct public business.

use of a non-governmental email account and the corresponding page in the Governor's privilege log are attached, collectively, as Exhibit G.

Plaintiffs are only aware of the Governor's, Mr. Weintz's, and Mr. Mullin's use of non-governmental email accounts because a handful of emails reflecting those unofficial email accounts were sent from or received by someone else in the Governor's Office who was using an official ".gov" email address. *See, e.g.*, Ex. C. Accordingly, those emails were captured by the Governor's Office when it searched the official email server for the Governor's Office for records responsive to Plaintiffs' May 1 ORA Request. However, the Governor's Office did not conduct a search of non-governmental email accounts or servers used by the Governor and her staff for records responsive to Plaintiffs' May 1, 2014 ORA Request. In response to Plaintiffs' First Set of Interrogatories No. 15, which asked for details regarding any efforts to search for and retrieve public records stored on unofficial or private email accounts or systems, Governor Fallin responded that *only the official email server for the Governor's Office was searched*. A true and correct of Governor Fallin's response to that interrogatory is attached as Exhibit H. Thus, responsive email records between Governor Fallin and other members of her staff using only non-governmental email accounts or servers, or any other email accounts that would not be captured on the official email server used by the Governor's Office, were not searched for, and were not released to Plaintiffs.


The failure to conduct a search of non-governmental email accounts violates the Governor's obligations under the ORA. Accordingly, it is necessary for the Governor's Office to conduct an additional search of non-governmental email accounts and/or servers used by the Governor and her staff in order to comply with the Governor's Office's obligations under the ORA. *See* ORA §24A.5; 2009 OK AG 12.

CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully request that the Court order the Governor's Office to conduct a search of all non-governmental email accounts maintained by Governor Fallin and any member of her current or former staff, including but not limited to maryfallin@sbcglobal.net, aweintz@gmail.com, and Steve Mullins's personal email account, that are likely to have records responsive to Plaintiffs' May 1, 2014 ORA Request.

Dated: October 26, 2016

Respectfully submitted,

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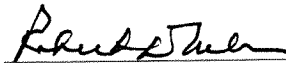
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that on October 26, 2016 a true and correct copy of the foregoing instrument was transmitted electronically and mailed, postage prepaid, to the following counsel of record:

Jennifer E. Chance, OBA #19320
Deputy General Counsel
Office of the Governor Mary Fallin
2300 N. Lincoln Blvd., Room 212
Oklahoma City, OK 73105

Steven J. Krise, OBA #17948
General Counsel
Kim M. Rytter, OBA #20825
Assistant General Counsel
Department of Public Safety
3600 Martin Luther King Ave.
Oklahoma City, OK 73111



1402676.1.999904:01820

EXHIBIT A

From: [Alex Weintz](#)
To: [Steve Mullins](#); [Denise Northrup](#); [Audrey Rockwell](#)
Subject: please review: Follow-up re: emails
Date: Wednesday, August 13, 2014 4:38:45 PM

Can you guys see below? Cary asking about use of personal emails ... let me know if this is an ok response:

As you can see by the document set on this issue (that includes over 50,000 pages of emails) the governor's staff uses official emails for official business. Occasionally in that document set, you will see a staffer use a personal email address. Usually that is done by accident, or because someone has their personal phone with them but left their blackberry at work, or some other circumstance like that. We consider all those emails to be subject to the Open Records act, because they are related to official business. We do not believe an email is exempt from the Open Records act simply because it was sent on a private account.

The governor has two email addresses: a "dot gov" address and a personal email address. Most of her emails are from the personal email address. Those emails that are related to official business on either account are subject to the Open Records act. However, the governor does the vast majority of her business in person, which is why you see very few emails from her.

That, by the way, is one of the problems with stories that have been generated by these records (as I see it). You are telling your readers "this is why the governor made her medicaid decision." But what you are really seeing is the emails sent between the policy director, chief of staff, and communications director debating what advice to give the governor. Policy decisions are made by the governor, in consultation with her senior advisers, and the vast majority of that work is done in person.

From: Aspinwall, Cary [Cary.Aspinwall@tulsaworld.com]
Sent: Wednesday, August 13, 2014 3:29 PM
To: Alex Weintz
Cc: Branstetter, Ziva
Subject: Follow-up re: emails

Alex-
Ziva forwarded me your response to our earlier questions. I have a follow-up based on the documents as well as your answers.

It appears, in the cases where email addresses were redacted, that the Governor and several of her staff members are regularly using personal email accounts to discuss/conduct state business.

1) How often is this occurring? Why are they using personal email instead of their official state email addresses? Is this an attempt to avoid disclosure of these communications under the ORA?

2) When news media and others make Open Records requests, what assurances do we have that any pertinent emails from these personal addresses are also being included in the documents provided? In other states, it has been determined that personal emails do fall under the laws governing open records if they are discussing public business. Is the governor's office taking care to preserve those communications as required by state law?

3) At least 26 states view the use of private emails for government business as clearly public records, the rest have no clear rules in place. There is no exemption listed in the Oklahoma ORA for personal email communications. In fact, a 2001 Attorney General's Opinion for the state deemed any emails discussing 'the transaction of public business' as public records under Oklahoma law. Is it the Governor's practice then to include all relevant personal emails discussing any public business when they are requested under the ORA?

4) We've seen thousands of records released by your office in response to various requests by news media. Very rarely do those records include emails from the Governor's official email address. Is she

EXHIBIT B

From: Alex Weintz
To: "maryfallin@██████████"
Cc: Denise Northrup; Steve Mullins
Subject: Re: Open records
Date: Monday, February 11, 2013 9:15:27 PM

I've already emailed his editors and hopefully they agree not to use that particular turn of phrase again. And we may want to send them some of the docs we have already gone through (even though they say they dont want them) so they cant write again that we are refusing to release anything.

The thing we need to realize and accept is that zeke is being directed to write these articles by his editors. They agree with him on this issue and they are every bit as problematic as zeke. You are not going to get a fair shake on this issue, period.

----- Original Message -----

From: Mary Fallin [<mailto:maryfallin@sbcglobal.net>]
Sent: Monday, February 11, 2013 08:22 PM
To: Alex Weintz
Cc: Denise Northrup; Steve Mullins
Subject: Re: Open records

That is why we need to confront zeke and hold him accountable for telling the truth. Give him what we got with an in writing certified letter telling him that we are giving what we have now - even though he has personally told us he didn't want Any info until it was in total. Copy the editorial board with copies if his emails telling us that unless we have All info at once He wouldn't take it. That way if he says that again, we can prove he is being less than honest...

Mary Fallin

On Feb 10, 2013, at 11:00 AM, Alex Weintz <Alex.Weintz@gov.ok.gov> wrote:

> The oak wrote we have "failed to turn over a single document" which is ridiculous since we have asked them if they want what we have ready now - constituent correspondence etc - and they have refused. I pointed that out to their editors. Bottom line is we will never get a fair shake from the media on this issue.

EXHIBIT C

From: Alex Weintz
To: Alex Gerszewski
Subject: Re: Today's Tulsa World Articles
Date: Tuesday, June 24, 2014 10:09:17 AM
Attachments: imace004.png
imace005.png

Thx

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

Governor,

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

-

State fails to autopsy most inmates

Editor's Note

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

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

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

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

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

Among the World's findings:

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

EXHIBIT E

Michael Teague

From: Michael McNutt
Sent: Saturday, September 03, 2016 8:53 AM
To: Michael Teague
Subject: RE: Earthquake

Thanks.
Will post on social media.

Michael McNutt
Communications Director
Oklahoma Governor Mary Fallin
(405) 522-88778 (office)
(405) 464-9175 (cell)
michael.mcnutt@gov.ok.gov

From: Michael Teague
Sent: Saturday, September 03, 2016 8:48 AM
To: Denise Northrup
Cc: Michael McNutt
Subject: Re: Earthquake

Michael
Just talked to Skinner. OCC staff is at the office reviewing disposal wells in the vicinity of the quake.
On Sep 3, 2016, at 08:24, Denise Northrup <Denise.Northrup@gov.ok.gov> wrote:

Michael - I think we can update social media with this stuff and occ's statement...right?

Makes the most sense to me right now

Sent from my iPhone

Begin forwarded message:

From: Albert Ashwood <albert.ashwood@oem.ok.gov>
Date: September 3, 2016 at 8:14:24 AM CDT
To: "Maryfallin@██████████" <Maryfallin@██████████>, Denise Northrup <Denise.Northrup@gov.ok.gov>
Subject: Earthquake

We have personnel en route to Pawnee to assess damages and needs. ODOT checking bridges and we're requesting structural engineers to assess building safety.

Albert Ashwood
Director

EXHIBIT F

From: [Alex Weintz](#)
To: [Steve Mullins](#); [Denise Northrup](#); [Jennifer Chance](#)
Subject: FW: STATEMENT ON EXECUTION
Date: Tuesday, April 29, 2014 7:56:02 PM
Attachments: image002.png
image003.png

This look ok?

From: Michael McNutt
Sent: Tuesday, April 29, 2014 07:53 PM
To: maryfallin@ [REDACTED] Mary Fallin
Cc: Alex Weintz; aweintz@gmail.com <aweintz@gmail.com>
Subject: STATEMENT ON EXECUTION

Governor,
This is a suggested statement on tonight's situation.
Please review as soon as you can.
Thanks.

"I have asked the Department of Corrections to issue a full review of Oklahoma's execution procedures to determine what happened and why during this evening's attempted execution of Clayton Derrell Lockett," said Fallin. "I have issued an executive order delaying the execution of Charles Frederick Warner for 14 days to allow time for a full evaluation."

Michael McNutt

Press Secretary

Office of Governor Mary Fallin
(405) 522-8878 - phone
(405) 464-9175 - cell
michael.mcنutt@gov.ok.gov

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the additional \$40 million is needed to do the job.

More important, we believe in consulting the public before a huge increase in state debt. Under the state Constitution, general obligation bond issues must be approved by the people. So-called "moral obligation" bonds, a fairly modern invention, wire around the Constitution's popular vote requirement by only strongly suggesting that future legislatures will live up to promised bond payments (with the potential of permanently wrecking the state's credit, if they don't).

We have no taste for moral obligation bonds. If the state is going to increase its debt, the people should agree on the bargain. They pay the bill. They should make the choice.

The odd politics of the Capitol may be brewing up another equally good, equally almost accidental alternative. The leader of House Democrats suggested that his caucus could change their vote on the \$160 million bond issue, if a proposed state income tax rate cut is killed. Both House and Senate have approved the tax cut plan, which is awaiting Gov. Mary Fallin's consideration.

We have no taste for the income tax cut at this point. It would take away needed revenue when the state is strapped for the cash to take care of essential services such as schools, roads and public safety.

Our preference would be to have no moral obligation bond issue and no income tax rate cut. Oklahoma's odd politics haven't created a scenario where that could be the result — but stranger things have happened.

Alex Gerszewski
Deputy Press Secretary
Office of Governor Mary Fallin
Phone - (405)522-8858
Cell - (405)568-1319
Alex.Gerszewski@gov.ok.gov



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From: Alex Weintz [mailto:aweintz@gmail.com]
Sent: Thursday, April 24, 2014 9:14 AM
To: Alex Gerszewski
Subject: Re: 4/24/14 Daily News Clips

Can u send these pls ulsa World – Path to executions cleared as Oklahoma Supreme Court reverses lower court's ruling

http://www.tulsaworld.com/news/courts/path-to-executions-cleared-as-oklahoma-supreme-court-reverses-lower/article_5d08e13e-2c4f-59ae-a825-8864bd37add1.html

Tulsa World – OKStrong fund raises \$4.6 million for May 2013 tornado victims' long-term needs

<http://www.tulsaworld.com/news/local/okstrong-fund-raises-million-for-may-tornado->

[victims-long-term/article_9e3b8852-55b8-58ae-a6ce-e2ff8383cc1f.html](http://www.tulsaworld.com/news/government/oklahoma-house-delivers-gov-fallin-s-much-sought-tax-cut/article_a2a9270b-eae7-5d98-9c38-3f469b1866bc.html)

Tulsa World – Oklahoma House delivers Gov. Fallin's much sought tax cut
http://www.tulsaworld.com/news/government/oklahoma-house-delivers-gov-fallin-s-much-sought-tax-cut/article_a2a9270b-eae7-5d98-9c38-3f469b1866bc.html

Tulsa World – Editorial: Odd state Capitol politics could lead to the right choice on Capitol repairs, income tax cut
http://www.tulsaworld.com/opinion/editorials/editorial-odd-state-capitol-politics-could-lead-to-the-right/article_56aab6c3-f6af-5fd6-9d1b-2787280cf046.html

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Sent from my iPad

On Apr 24, 2014, at 7:55 AM, Alex Gerszewski <Alex.Gerszewski@gov.ok.gov> wrote:

Tulsa World – Path to executions cleared as Oklahoma Supreme Court reverses lower court's ruling
http://www.tulsaworld.com/news/courts/path-to-executions-cleared-as-oklahoma-supreme-court-reverses-lower/article_5d08e13e-2c4f-59ae-a825-8864bd37add1.html

Tulsa World – OKStrong fund raises \$4.6 million for May 2013 tornado victims' long-term needs
http://www.tulsaworld.com/news/local/okstrong-fund-raises-million-for-may-tornado-victims-long-term/article_9e3b8852-55b8-58ae-a6ce-e2ff8383cc1f.html

Tulsa World – Oklahoma House delivers Gov. Fallin's much sought tax cut
http://www.tulsaworld.com/news/government/oklahoma-house-delivers-gov-fallin-s-much-sought-tax-cut/article_a2a9270b-eae7-5d98-9c38-3f469b1866bc.html

Tulsa World – Editorial: Odd state Capitol politics could lead to the right choice on Capitol repairs, income tax cut
http://www.tulsaworld.com/opinion/editorials/editorial-odd-state-capitol-politics-could-lead-to-the-right/article_56aab6c3-f6af-5fd6-9d1b-2787280cf046.html

EXHIBIT G

From: [REDACTED]
To: Alex Weintz
Subject: RE: Cause No. 112, 741 Supreme Court Opinion - 2014 OK 34
Date: Wednesday, April 23, 2014 7:30:47 PM

Oklahoma Supreme Court

From: Alex Weintz
Sent: Wednesday, April 23, 2014 7:28 PM
To: [REDACTED]
Subject: Re: Cause No. 112, 741 Supreme Court Opinion - 2014 OK 34

And thats okla court or scotus making that ruling? I cant open these docs.

From: [REDACTED]
Sent: Wednesday, April 23, 2014 07:11 PM
To: Michael McNutt; Steve Mullins; Denise Northrup; Jennifer Chance; Alex Weintz;
[REDACTED]
Subject: RE: Cause No. 112, 741 Supreme Court Opinion - 2014 OK 34

It looks like they have

- 1) found the secrecey statute is constitutional, which reversed the trial court. (This is what DOC was appealing).
- 2) found the internal operating procedures of DOC re: inmates (and execution protocol) not subject to rulemaking requirements of the APA, which affirmed the trial court. (This is what the inmates appealed)
- 3) Dissolved stay for both inmates.

Steve is this what you're seeing, as well?

From: [REDACTED]
Sent: Wednesday, April 23, 2014 7:03 PM
To: Michael McNutt; Steve Mullins; Denise Northrup; Jennifer Chance; Alex Weintz;
mullins [REDACTED]
Subject: FW: Cause No. 112, 741 Supreme Court Opinion - 2014 OK 34

I've added Steve's personal so he can read them on his pc

From: Michael McNutt
Sent: Wednesday, April 23, 2014 6:54 PM
To: Steve Mullins; Denise Northrup; [REDACTED] Jennifer Chance; Alex Weintz
Subject: FW: Cause No. 112, 741 Supreme Court Opinion - 2014 OK 34

Supreme Court dissolves stay of execution for Lockett....

From: Engelbert, Polly [<mailto:Polly.Engelbert@oscn.net>]
Sent: Wednesday, April 23, 2014 6:41 PM
To: ap 1; ap 2; associated press; Bryan Smith; Bryan Smith 2; Calvin Wright; DARIN FOX; DAVID ARNETT; Erin Boeckman; G. Brewer; Janelle Stecklein; Jerry Bohnen; Jim Hankins; journal record; Parks, Judy; JUSTIN MARTINO; Marie Price; Matt Dinger; Michael McNutt; Nolan Clay; ok state; patrick (James.Sweeney47@yahoo.com); Patrick B. McGuigan; Patrick B. McGuigan 2; Randy Ellis; RICK GREEN; Scott Cooper; SPECTOR; Steve Mullins; STEVEN WILLIAMSON; TRAVIS WHITE; tulsa world
Cc: Calloway, Terri
Subject: FW: Cause No. 112, 741 Supreme Court Opinion - 2014 OK 34

From: Richie, Michael

Page #	Redaction 1	Redaction 2	Redaction 3	Redaction 4	Redaction 5
	See 51 O.S. § 24A.7, 1999 OK AG 30, and 2001 OK AG 46 - back end of Governor's private email	N/A	N/A	N/A	N/A
15654	See 22 O.S. §1015(B) - ok.gov Gov Staff email redacted	N/A	N/A	N/A	N/A
15665	See 22 O.S. §1015(B) - ok.gov Gov Staff email redacted	N/A	N/A	N/A	N/A
15668	See 22 O.S. §1015(B) - ok.gov Gov Staff email redacted	N/A	N/A	N/A	N/A
15688	See 22 O.S. §1015(B) - ok.gov Gov Staff email redacted	N/A	N/A	N/A	N/A
15906	See 22 O.S. §1015(B) - ok.gov Gov Staff email redacted	N/A	N/A	N/A	N/A
15988	See 22 O.S. §1015(B) - ok.gov Gov Staff email redacted	See 22 O.S. §1015(B) - ok.gov Gov Staff email redacted	See 22 O.S. §1015(B) - ok.gov Gov Staff email redacted	Steve Mullins private email fully redacted in error (51 O.S. § 24A.7, 1999 OK AG 30, and 2001 OK AG 46) - see p. 15986	See 22 O.S. §1015(B) - ok.gov Gov Staff email redacted
17013	See 22 O.S. §1015(B) - ok.gov Gov Staff email redacted	See 22 O.S. §1015(B) - ok.gov Gov Staff email redacted	N/A	N/A	N/A
17121	Document dates are outside the scope of the Plaintiff's open record request of records March 1-present	N/A	N/A	N/A	N/A

EXHIBIT H

evidence, insofar as it requests information prior to the implementation of the current open records policy. The following is responsive to the Interrogatory under the current open records policy: *See attached documents.*

12. Identify the date on which the "email documentation pull" described in Paragraph 26 of the ROCKWELL AFFIDAVIT was sent to the Information Services Division of the Office of Management Enterprise Services.

RESPONSE: See Governor Fallin's Response to Plaintiff's Request for Production Number

13. Identify the date by which "all physical documentation regarding executions" had "been gathered," as described in Paragraph 26 of the ROCKWELL AFFIDAVIT.

RESPONSE: February 2015.

14. Identify the date by which "all physical documentation regarding executions" was "scanned in" as described in Paragraph 26 of the ROCKWELL AFFIDAVIT.

RESPONSE: February 2015.

15. Describe in detail YOUR efforts to search for and retrieve PUBLIC RECORDS stored on unofficial or private email accounts or systems, including but not limited to email sent or received from any non-"ok.gov" or non-"state.ok.us" email address-for the purposes of responding to the request for PUBLIC RECORDS that is at issue in this ACTION.

RESPONSE: All electronic/email records are stored on the server operated by the Office of Management and Enterprise Services (OMES), which services the Office of the Governor. If there are responsive emails/records from private email accounts contained within the records on the OMES server, those responsive emails are produced in open records request responses, unless those emails are withheld due to privilege(s) or another exception to the Open Records Act.