

Do Oklahoma Courts Support Open Government?

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An in depth look at the Oklahoma Supreme Court shows that since 1978 the court most often rules against supporting open government.

Thirty-two Supreme Court rulings were examined from April 1978 to December 2014. The final [scorecard](#) includes four categories of rulings; pro open government, anti open government, mixed opinions and neutral. Of the 32 cases, eight were deemed neutral, meaning the court decision was based upon exact verbiage of the Open Records Act or Open Meetings Act as written by the state legislature. 10 were voted anti open government, including the most recent case decided in December 2014. Nine were ruled in favor of open government and the final five were deemed to have mixed opinions. The scorecard shows a slight trend toward fewer rulings against open government.

Among the sitting justices, many of whom are up for votes of retention in the coming years, [Justice Douglas L. Combs](#) was most likely to vote supporting open government with 60 percent of his votes. On the other hand, [Justice Noma D. Gurich](#) was most likely to oppose open government with votes against 50 percent of the time.

Justice Combs stands out as a staunch supporter of open government. He was the lone vote in support of open government in *Vandelay Entertainment, LLC v. Fallin*. In this case, Governor Fallin refused to release documents relating to advice given to her by senior executive branch officials. The court ruled in favor of Governor Mary Fallin, however Combs wrote his own dissenting opinion. In this, he recognized a need for executive privilege but stressed the importance of creating boundaries because of the public's right to know.

The Oklahoma constitution recognizes the people's inherent right to know and be informed about what their government is doing. The goals of the Open Records and Open Meetings Acts are to provide Oklahomans with context of how, when and what they have access to. This system creates an "open government" in which the people can check in on elected officials, understand how tax dollars are being used and question the government in a structured manner. The goal here was to determine how the courts view open government and the public's need to access it.

In addition to looking at the rulings of the Supreme Court, this research also tracked rulings of the Court of Civil Appeals and the Court of Criminal Appeals, whose judges seemed to lean slightly in favor of open government.

The Court of Civil Appeals proved itself to be far more supportive of open government, with 50 percent of its 22 rulings since 1981 in favor of open government. Looking at the individual level, [Judge William Hetherington Jr.](#) leans slightly more against open government than the rest of the sitting judges.

The Court of Criminal Appeals has ruled on only four relevant cases. Of these four cases, two were in favor of open government, one against and one neutral. There are not enough cases to determine the leanings of the individual judges.

This analysis was compiled as a senior thesis project by Samantha Mori and Dr. Joey Senat, using the Oklahoma Supreme Court Network databases to discover and study cases related to open government. All cases including the words “open government”, “open records act” and “open meeting act” were assessed. The Open Meetings Act was passed in 1977 and the Open Records Act was amended at this same time. For these reasons, we did not look to cases older than 1978 because any rulings would have been made moot by the new language of the acts. To view the entire scorecard as well as scorecards for sitting justices and judges, [click here](#). FOI Oklahoma will be updating the scorecard as new rulings are issued.