

IN THE DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

VANDELAY ENTERTAINMENT, LLC )

d.b.a. THE LOST OGLE, )

Plaintiff, )

vs. )

MARY FALLIN, in her official )

Capacity as GOVERNOR OF THE )

STATE OF OKLAHOMA; STATE )

OF OKLAHOMA, ex rel. OFFICE OF )

THE GOVERNOR, )

Defendants. )

Case No: **CV-2013-763**

Assigned Judge: FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

APR -9 2013

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

COMES NOW, Vandelay Entertainment, LLC, doing business as "The Lost Ogle," Plaintiff herein, by and through its attorney of record, Brady R. Henderson of the American Civil Liberties Union of Oklahoma Foundation, and pursuant to 51 O.S. §24A.17(B), hereby petitions this Honorable Court to temporarily and permanently enjoin Mary Fallin, Governor of the State of Oklahoma, and the employees and officials of the Office of the Governor of Oklahoma from continuing to deny access to specific public records in violation of the Oklahoma Open Records Act (51 O.S. §§24A.1-24A.29), and to determine and declare the rights and responsibilities of both parties as to records barred from public access under color of "Open Records confidentiality," "executive privilege," and/or "deliberative process privilege." In support of said Petition, Plaintiff alleges and states:

I. STATEMENT OF FACTS

1. Plaintiff is a domestic limited liability company registered and in good standing with the Oklahoma Secretary of State, with its primary place of business in Oklahoma City, Oklahoma. Plaintiff's principle business activity is the operation

of a website called "The Lost Ogle," which features news, entertainment, satire, and "occasional humor."

2. Defendant Mary Fallin, Governor of the State of Oklahoma (hereinafter "Governor Fallin") is an elected official currently holding the office of Governor of Oklahoma. Her place of residence and her place of public office are both located in Oklahoma City, Oklahoma, within the boundaries of Oklahoma County.
3. Defendant State of Oklahoma ex rel. Office of the Governor (hereinafter "Office of the Governor") is an executive office of the State of Oklahoma employing numerous state employees and officials who aid the Governor in the execution of her official duties. The Office of the Governor is located in Oklahoma City, Oklahoma, within the boundaries of Oklahoma County.
4. Both Governor Fallin and the Office of the Governor are subject to the requirements of the Oklahoma Open Records Act (51 O.S. §§24A.1-24A.28), as a public official and as a public body, respectively.
5. On or about December 7, 2012, Plaintiff, by and through its owner and publisher, Patrick Riley, sent Governor Fallin a written request to make specified public records available for inspection pursuant to the Oklahoma Open Records Act. This request was received on or about December 10, 2012, by the Office of the Governor. A copy of this written request is attached as Exhibit "A."
6. On or about March 29, 2013, the Office of the Governor released 51,029 pages of documents in digital format. This release was made in combined response to multiple Open Records Requests of substantially similar scope to that made by the Plaintiff. Despite the large number of documents released, the release did not include all responsive documents in the Defendants' possession.
7. On the same day on which the digital documents were released (and not on the letter's stated date of March 29, 2012), the Office of Governor Fallin, through General Counsel Steve Mullins, issued a letter along with the records release.

This letter confirms a denial of access to thirty-one documents, consisting of a total of one-hundred pages. Further information as to the content of the documents is unknown, other than that each is a record responsive to the Open Records Request of Plaintiff and other media outlets and thus would be subject to release but for the Defendants' assertion of a purported right to withhold them. A copy of this letter is attached as Exhibit "B."

8. The aforementioned letter from General Counsel Mullins fails to cite any of the Open Records Act's public records access exemptions or any other specific statutory provision as a reason or justification for the denial of access to public records. Instead, it indicates merely that the Office of the Governor has asserted "Open Records confidentiality."
9. The phrase "Open Records confidentiality" can be found neither in the Oklahoma Constitution, nor in any Oklahoma statute or published court decision, opinion, or dissent. Likewise, it is not present in the United States Constitution, any federal statute, or any published federal court decision, opinion, or dissent.
10. Since any mention, much less definition, of "Open Records confidentiality" appears absent in the American legal system, Plaintiff's plain reading of the aforementioned letter provides the sole basis for its discernment of what meaning is intended by the Defendants. The letter does not provide a precise definition, but implies that this paradoxical term may "include but [be] not limited to" assertions of "executive privilege, deliberative process privilege, and attorney-client privilege."
11. The phrase "executive privilege" can be found neither in the Oklahoma Constitution, nor in any Oklahoma statute or published court decision, opinion, or dissent.
12. The phrase "deliberative process privilege" can be found neither in the Oklahoma Constitution, nor in any Oklahoma statute or published court decision, opinion, or dissent.

18. The Oklahoma Open Records Act exempts some records from disclosure, particularly those that are “specifically required by law to be kept confidential.” 51 O.S. §24A.5(1). However, not one of the thirty-one documents Defendants are currently concealing from public view has been shown to be properly subject to a specific cognizable privilege or exemption.
19. As such, Defendants have not met their respective duties under the Oklahoma Open Records Act, having denied Plaintiff’s owner and publisher access to thirty-one public records without any demonstration that said records are exempt from release under the Open Records Act.
20. Under 51 O.S. §24A.17(B), the Defendants’ denial of access to these thirty-one records is actionable by civil suit for declaratory and injunctive relief.

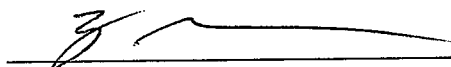
#### PRAYER FOR RELIEF

21. Pursuant to 51 O.S. §24A.17(B), Plaintiff requests injunctive relief be granted via judicial order for the immediate release of all responsive records not actually exempted by the Oklahoma Open Records Act, to specifically include the thirty-one documents to which access has been denied, or the appropriate number or portion thereof to be determined by the Court.
22. Plaintiff further prays that should either Governor Fallin or the Office of the Governor subsequently assert a specific and putatively proper exemption to the public’s right of access, such as attorney-client privilege under 51 O.S. 24A.5(1)(a), as to any of the thirty-one documents currently concealed, this Court require strict proof of the applicability of the exemption to the specific content of the record(s), in the form of in camera examination(s) or, at minimum, sworn affidavit(s).
23. Plaintiff further prays that the Court provide declaratory relief by judicially recognizing Plaintiff’s right of access to all public records within the possession or control of Governor Fallin or the Office of the Governor, unless exempted from release by a specific provision of the Oklahoma Open Records Act.

24. 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 or action on the merits.

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

Respectfully Submitted,

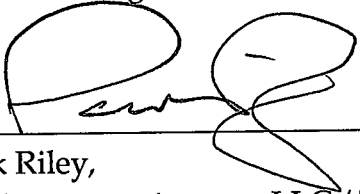


Brady R. Henderson, OBA#21212  
ACLU of Oklahoma Foundation  
3000 Paseo Drive  
Oklahoma City, OK 73103  
(405) 524-8511, (405) 524-2296 (fax)

STATE OF OKLAHOMA )  
 ) ss.  
County of Oklahoma )

Patrick Riley, being of lawful age and first duly sworn upon oath, deposes and states:

1. I, Patrick Riley, am duly authorized to act on behalf of Vandelay Entertainment, LLC, which operates The Lost Ogle.
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.

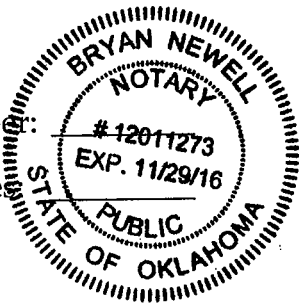
  
\_\_\_\_\_  
Patrick Riley,  
Vandelay Entertainment, LLC / The Lost Ogle

Subscribed and sworn before me this 8<sup>th</sup> day of April, 2013.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Number:

My Commission Expires:



## TheLostOgle.com

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

From: Patrick Riley,  
Publisher, TheLostOgle.com  
c/o ACLU of Oklahoma  
3000 Paseo Drive  
Oklahoma City, OK 73103

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

Pursuant to the Oklahoma Open Records Act, 51 O.S. §§24A.1-24A.29, I, Patrick Riley, Publisher of TheLostOgle.com, hereby requests that the following records be made available for inspection and duplication at my election:

1. All emails and other correspondence wherein the Governor or any member of the Governor's staff were a sender or recipient, in which the subject, title, or content therein includes the phrase "health care exchange," and the date of which is January 1, 2010 or later.
2. All emails and other correspondence wherein the Governor or any member of the Governor's staff were a sender or recipient, in which the subject, title, or content therein includes the phrase "Affordable Care Act," and the date of which is January 1, 2010 or later.
3. All emails and other correspondence wherein the Governor or any member of the Governor's staff were a sender or recipient, in which the subject, title, or content therein includes the word "Obamacare," and the date of which is January 1, 2010 or later.
4. All emails and other correspondence wherein the Governor or any member of the Governor's staff were a sender or recipient, in which the subject, title, or content therein includes the word "Obama," and the date of which is January 1, 2010 or later.

5. All emails and other correspondence wherein the Governor or any member of the Governor's staff were a sender or recipient, in which the subject, title, or content therein includes the word "Medicaid," and the date of which is January 1, 2010 or later.
6. All meeting logs, electronic calendar entries, or scheduling entries referencing any and all meetings taken or scheduled by the Governor or any member of the Governor's staff, the date of which is January 1, 2010 or later.
7. All reports, memoranda, executive briefing documents, and executive summaries, the date of which is January 1, 2010 or later, and which contain any of the following words or phrases: "Obama," "Obamacare," "health care exchange," "affordable care act," or "medicaid."

Please note that I am asking to inspect these records. I reserve, however, the right to request copies when the records are examined.

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." 51 O.S. §21A.5(3) As an editor, reporter, and member of the news media representing the citizens of Oklahoma, who are vested in ensuring their government is responsive to their wishes and needs, particularly when the issue pertains to the spending of, or planned spending of, taxpayer dollars, my request falls within this provision of the Open Records Act requiring that no search fee should be charged.

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

Responses to this request should be directed to Patrick Riley, at [TheLostOgle.com](http://TheLostOgle.com), c/o ACLU of Oklahoma Foundation, 3000 Paseo Drive, Oklahoma City, OK 73103.

Thank you in advance for your prompt reply.

Sincerely,

s/ Patrick Riley  
Patrick Riley,  
Publisher, [TheLostOgle.com](http://TheLostOgle.com)





**Mary Fallin**  
Governor

March 29, 2012

*Hand Delivery*

Patrick Riley, reporter  
The Lost Ogle

Re: Open Records Request on Affordable Care Act

Dear Mr. Riley:

Enclosed on the attached compact disc are 51,029 pages of non-privileged documents responsive to your open records request regarding the *Affordable Care Act*.

This office reviewed all correspondence, briefings, presentations, and memorandums sent, received, and created by all levels of the Governor's office. After conducting a thorough legal review, this office asserted Open Records confidentiality on only thirty-one (31) documents consisting of one hundred (100) pages of materials. These thirty-one documents account for only two tenth of one percent (.2%) of the responsive documents and include but not limited to, executive privilege, deliberative process privilege, and attorney-client privilege. As you can see, very few documents fall within a privileged category and it has always been the practice of this administration to invoke privilege sparingly.

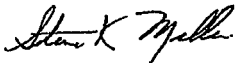
The Governor is firmly committed to the principles of transparent and open government. She also recognizes that there are limited circumstances where confidentiality of governmental documents is appropriate. These limited circumstances are commonly embodied in legal privileges that originate through the Constitution, Oklahoma Statutes, and judicial opinions. The legislature and judiciary carefully craft these privileges to provide for an appropriate level of access to governmental documents by the public.

As you know, Oklahoma's *Open Records Act* incorporates all Constitutional, statutory, and judicial privileges. In this document production, the Governor has invoked several legal privileges, including ones involving senior executive branch officials who are offering advice and counsel to the governor. These privileges are frequently referred to as the executive and deliberative process privileges. These executive privileges are grounded on Article 4 § 1 of the *Oklahoma Constitution* providing for separate and distinct branches of government.

These executive privileges are recognized by both the federal government and most states. For example, states specifically recognizing these privileges in court cases include; New Jersey, Maryland, Alaska, Pennsylvania, Ohio, Vermont, Delaware, California, Virginia, Kentucky, New Mexico, Colorado, Michigan, New York, Nevada, Texas, Arizona, Wisconsin, Illinois, North Carolina, Massachusetts, Wyoming and West Virginia.

Please feel free to contact me at (405) 522-8853 or Alex Weintz, Communications Director at (405) 522-8819 during business hours if you have any further questions.

Sincerely,



Steven K. Mullins  
General Counsel

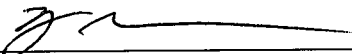
Enclosures

## CERTIFICATE OF SERVICE

This is to certify that on the day of filing, a true and correct copy of the above and foregoing was sent via Certified United States Mail, postage prepaid, with Return Receipt requested, 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

Office of the Governor of Oklahoma  
Oklahoma State Capitol  
2300 N. Lincoln Blvd., Room 212  
Oklahoma City, OK 73105



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Brady R. Henderson