

## HOUSE BILL No. 2742

By Committee on Federal and State Affairs

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AN ACT amending the open records act; amending K.S.A. 45-217 and K.S.A. 2001 Supp. 45-221 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 45-217 is hereby amended to read as follows: 45-217. As used in the open records act, unless the context otherwise requires:

(a) "Business day" means any day other than a Saturday, Sunday or day designated as a holiday by the congress of the United States, by the legislature or governor of this state or by the respective political subdivision of this state.

(b) "Criminal investigation records" means records of an investigatory agency or criminal justice agency as defined by K.S.A. 22-4701 and amendments thereto, compiled in the process of preventing, detecting or investigating violations of criminal law, but does not include police blotter entries, court records, rosters of inmates of jails or other correctional or detention facilities or records pertaining to violations of any traffic law other than vehicular homicide as defined by K.S.A. 21-3405 and amendments thereto.

(c) "Custodian" means the official custodian or any person designated by the official custodian to carry out the duties of custodian of this act.

(d) "Official custodian" means any officer or employee of a public agency who is responsible for the maintenance of public records, regardless of whether such records are in the officer's or employee's actual personal custody and control.

(e) (1) "Public agency" means the state or any political or taxing subdivision of the state or any office, officer, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by the public funds appropriated by the state or by public funds of any political or taxing subdivision of the state.

(2) "Public agency" shall not include:

(A) Any entity solely by reason of payment from public funds for property, goods or services of such entity; (B) any municipal judge, judge of the district court, judge of the court of appeals or justice of the supreme court; or (C) any officer or employee of the state or political or taxing

1 subdivision of the state if the state or political or taxing subdivision does  
2 not provide the officer or employee with an office which is open to the  
3 public at least 35 hours a week.

4 (f) (1) "Public record" means any recorded information, regardless  
5 of form or characteristics, which is made, maintained or kept by or is in  
6 the possession of any public agency including, but not limited to, an agree-  
7 ment in settlement of litigation involving the Kansas public employees  
8 retirement system and the investment of moneys of the fund.

9 (2) "Public record" shall not include records which are owned by a  
10 private person or entity and are not related to functions, activities, pro-  
11 grams or operations funded by public funds or *private* records which are  
12 made, maintained or kept by an individual who is a member of the leg-  
13 islature or of the governing body of any political or taxing subdivision of  
14 the state.

15 (3) "Public record" shall not include records of employers related to  
16 the employer's individually identifiable contributions made on behalf of  
17 employees for workers compensation, social security, unemployment in-  
18 surance or retirement. The provisions of this subsection shall not apply  
19 to records of employers of lump-sum payments for contributions as de-  
20 scribed in this subsection paid for any group, division or section of an  
21 agency.

22 (g) "Undercover agent" means an employee of a public agency re-  
23 sponsible for criminal law enforcement who is engaged in the detection  
24 or investigation of violations of criminal law in a capacity where such  
25 employee's identity or employment by the public agency is secret.

26 Sec. 2. K.S.A. 2001 Supp. 45-221 is hereby amended to read as fol-  
27 lows: 45-221. (a) Except to the extent disclosure is otherwise required by  
28 law, a public agency shall not be required to disclose:

29 (1) Records the disclosure of which is specifically prohibited or re-  
30 stricted by federal law, state statute or rule of the Kansas supreme court  
31 or the disclosure of which is prohibited or restricted pursuant to specific  
32 authorization of federal law, state statute or rule of the Kansas supreme  
33 court to restrict or prohibit disclosure.

34 (2) Records which are privileged under the rules of evidence, unless  
35 the holder of the privilege consents to the disclosure.

36 (3) Medical, psychiatric, psychological or alcoholism or drug depend-  
37 ency treatment records which pertain to identifiable patients.

38 (4) Personnel records, performance ratings or individually identifia-  
39 ble records pertaining to employees or applicants for employment, except  
40 that this exemption shall not apply to the names, positions, salaries and  
41 lengths of service of officers and employees of public agencies once they  
42 are employed as such.

43 (5) Information which would reveal the identity of any undercover

1 agent or any informant reporting a specific violation of law.

2 (6) Letters of reference or recommendation pertaining to the char-  
3 acter or qualifications of an identifiable individual.

4 (7) Library, archive and museum materials contributed by private  
5 persons, to the extent of any limitations imposed as conditions of the  
6 contribution.

7 (8) Information which would reveal the identity of an individual who  
8 lawfully makes a donation to a public agency, if anonymity of the donor  
9 is a condition of the donation.

10 (9) Testing and examination materials, before the test or examination  
11 is given or if it is to be given again, or records of individual test or ex-  
12 amination scores, other than records which show only passage or failure  
13 and not specific scores.

14 (10) Criminal investigation records, except that the district court, in  
15 an action brought pursuant to K.S.A. 45-222, and amendments thereto,  
16 may order disclosure of such records, subject to such conditions as the  
17 court may impose, if the court finds that disclosure:

18 (A) Is in the public interest;

19 (B) would not interfere with any prospective law enforcement action;

20 (C) would not reveal the identity of any confidential source or un-  
21 dercover agent;

22 (D) would not reveal confidential investigative techniques or proce-  
23 dures not known to the general public;

24 (E) would not endanger the life or physical safety of any person; and

25 (F) would not reveal the name, address, phone number or any other  
26 information which specifically and individually identifies the victim of any  
27 sexual offense in article 35 of chapter 21 of the Kansas Statutes Anno-  
28 tated, and amendments thereto.

29 (11) Records of agencies involved in administrative adjudication or  
30 civil litigation, compiled in the process of detecting or investigating vio-  
31 lations of civil law or administrative rules and regulations, if disclosure  
32 would interfere with a prospective administrative adjudication or civil  
33 litigation or reveal the identity of a confidential source or undercover  
34 agent.

35 (12) Records of emergency or security information or procedures of  
36 a public agency, or plans, drawings, specifications or related information  
37 for any building or facility which is used for purposes requiring security  
38 measures in or around the building or facility or which is used for the  
39 generation or transmission of power, water, fuels or communications, if  
40 disclosure would jeopardize security of the public agency, building or  
41 facility.

42 (13) The contents of appraisals or engineering or feasibility estimates  
43 or evaluations made by or for a public agency relative to the acquisition

1 of property, prior to the award of formal contracts therefor.

2 ~~(14) Correspondence between a public agency and a private individual,~~  
3 ~~other than correspondence which is intended to give notice of an~~  
4 ~~action, policy or determination relating to any regulatory, supervisory or~~  
5 ~~enforcement responsibility of the public agency or which is widely dis-~~  
6 ~~tributed to the public by a public agency and is not specifically in response~~  
7 ~~to communications from such a private individual.~~

8 ~~(15)~~ (14) Records pertaining to employer-employee negotiations, if  
9 disclosure would reveal information discussed in a lawful executive ses-  
10 sion under K.S.A. 75-4319, and amendments thereto.

11 ~~(16)~~ (15) Software programs for electronic data processing and doc-  
12 umentation thereof, but each public agency shall maintain a register, open  
13 to the public, that describes:

14 (A) The information which the agency maintains on computer facil-  
15 ities; and

16 (B) the form in which the information can be made available using  
17 existing computer programs.

18 ~~(17)~~ (16) Applications, financial statements and other information  
19 submitted in connection with applications for student financial assistance  
20 where financial need is a consideration for the award.

21 ~~(18)~~ (17) Plans, designs, drawings or specifications which are pre-  
22 pared by a person other than an employee of a public agency or records  
23 which are the property of a private person.

24 ~~(19)~~ (18) Well samples, logs or surveys which the state corporation  
25 commission requires to be filed by persons who have drilled or caused to  
26 be drilled, or are drilling or causing to be drilled, holes for the purpose  
27 of discovery or production of oil or gas, to the extent that disclosure is  
28 limited by rules and regulations of the state corporation commission.

29 ~~(20)~~ (19) Notes, preliminary drafts, research data in the process of  
30 analysis, unfunded grant proposals, memoranda, recommendations or  
31 other records in which opinions are expressed or policies or actions are  
32 proposed, except that this exemption shall not apply when such records  
33 are publicly cited or identified in an open meeting or in an agenda of an  
34 open meeting.

35 ~~(21)~~ (20) Records of a public agency having legislative powers, which  
36 records pertain to proposed legislation or amendments to proposed leg-  
37 islation, except that this exemption shall not apply when such records are:

38 (A) Publicly cited or identified in an open meeting or in an agenda  
39 of an open meeting; or

40 (B) distributed to a majority of a quorum of any body which has au-  
41 thority to take action or make recommendations to the public agency with  
42 regard to the matters to which such records pertain.

43 ~~(22)~~ (21) Records of a public agency having legislative powers, which

1 records pertain to research prepared for one or more members of such  
2 agency, except that this exemption shall not apply when such records are:

3 (A) Publicly cited or identified in an open meeting or in an agenda  
4 of an open meeting; or

5 (B) distributed to a majority of a quorum of any body which has au-  
6 thority to take action or make recommendations to the public agency with  
7 regard to the matters to which such records pertain.

8 ~~(23)~~ (22) Library patron and circulation records which pertain to  
9 identifiable individuals.

10 ~~(24)~~ (23) Records which are compiled for census or research pur-  
11 poses and which pertain to identifiable individuals.

12 ~~(25)~~ (24) Records which represent and constitute the work product  
13 of an attorney.

14 ~~(26)~~ (25) Records of a utility or other public service pertaining to  
15 individually identifiable residential customers of the utility or service, ex-  
16 cept that information concerning billings for specific individual customers  
17 named by the requester shall be subject to disclosure as provided by this  
18 act.

19 ~~(27)~~ (26) Specifications for competitive bidding, until the specifica-  
20 tions are officially approved by the public agency.

21 ~~(28)~~ (27) Sealed bids and related documents, until a bid is accepted  
22 or all bids rejected.

23 ~~(29)~~ (28) Correctional records pertaining to an identifiable inmate or  
24 release, except that:

25 (A) The name; photograph and other identifying information; sen-  
26 tence data; parole eligibility date; custody or supervision level; disciplinary  
27 record; supervision violations; conditions of supervision, excluding  
28 requirements pertaining to mental health or substance abuse counseling;  
29 location of facility where incarcerated or location of parole office main-  
30 taining supervision and address of a releasee whose crime was committed  
31 after the effective date of this act shall be subject to disclosure to any  
32 person other than another inmate or releasee, except that the disclosure  
33 of the location of an inmate transferred to another state pursuant to the  
34 interstate corrections compact shall be at the discretion of the secretary  
35 of corrections;

36 (B) the ombudsman of corrections, the attorney general, law enforce-  
37 ment agencies, counsel for the inmate to whom the record pertains and  
38 any county or district attorney shall have access to correctional records to  
39 the extent otherwise permitted by law;

40 (C) the information provided to the law enforcement agency pursu-  
41 ant to the sex offender registration act, K.S.A. 22-4901, *et seq.*, and  
42 amendments thereto, shall be subject to disclosure to any person, except  
43 that the name, address, telephone number or any other information which

1 specifically and individually identifies the victim of any offender required  
2 to register as provided by the Kansas offender registration act, K.S.A. 22-  
3 4901 *et seq.* and amendments thereto, shall not be disclosed; and

4 (D) records of the department of corrections regarding the financial  
5 assets of an offender in the custody of the secretary of corrections shall  
6 be subject to disclosure to the victim, or such victim's family, of the crime  
7 for which the inmate is in custody as set forth in an order of restitution  
8 by the sentencing court.

9 ~~(30)~~ (29) Public records containing information of a personal nature  
10 where the public disclosure thereof would constitute a clearly unwar-  
11 ranted invasion of personal privacy.

12 ~~(31)~~ (30) Public records pertaining to prospective location of a busi-  
13 ness or industry where no previous public disclosure has been made of  
14 the business' or industry's interest in locating in, relocating within or  
15 expanding within the state. This exception shall not include those records  
16 pertaining to application of agencies for permits or licenses necessary to  
17 do business or to expand business operations within this state, except as  
18 otherwise provided by law.

19 ~~(32)~~ (31) Engineering and architectural estimates made by or for any  
20 public agency relative to public improvements.

21 ~~(33)~~ (32) Financial information submitted by contractors in qualifi-  
22 cation statements to any public agency.

23 ~~(34)~~ (33) Records involved in the obtaining and processing of intel-  
24 lectual property rights that are expected to be, wholly or partially vested  
25 in or owned by a state educational institution, as defined in K.S.A. 76-  
26 711, and amendments thereto, or an assignee of the institution organized  
27 and existing for the benefit of the institution.

28 ~~(35)~~ (34) Any report or record which is made pursuant to K.S.A. 65-  
29 4922, 65-4923 or 65-4924, and amendments thereto, and which is privi-  
30 leged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

31 ~~(36)~~ (35) Information which would reveal the precise location of an  
32 archeological site.

33 ~~(37)~~ (36) Any financial data or traffic information from a railroad com-  
34 pany, to a public agency, concerning the sale, lease or rehabilitation of  
35 the railroad's property in Kansas.

36 ~~(38)~~ (37) Risk-based capital reports, risk-based capital plans and cor-  
37 rective orders including the working papers and the results of any analysis  
38 filed with the commissioner of insurance in accordance with K.S.A. 40-  
39 2c20 and ~~45-2d20~~ 40-2d20 and amendments thereto.

40 ~~(39)~~ (38) Memoranda and related materials required to be used to  
41 support the annual actuarial opinions submitted pursuant to subsection  
42 (b) of K.S.A. 40-409, and amendments thereto.

43 ~~(40)~~ (39) Disclosure reports filed with the commissioner of insurance

1 under subsection (a) of K.S.A. 40-2,156, and amendments thereto.

2 ~~(41)~~ (40) All financial analysis ratios and examination synopses con-  
3 cerning insurance companies that are submitted to the commissioner by  
4 the national association of insurance commissioners' insurance regulatory  
5 information system.

6 ~~(42)~~ (41) Any records the disclosure of which is restricted or prohib-  
7 ited by a tribal-state gaming compact.

8 ~~(43)~~ (42) Market research, market plans, business plans and the terms  
9 and conditions of managed care or other third party contracts, developed  
10 or entered into by the university of Kansas medical center in the operation  
11 and management of the university hospital which the chancellor of the  
12 university of Kansas or the chancellor's designee determines would give  
13 an unfair advantage to competitors of the university of Kansas medical  
14 center.

15 ~~(44)~~ (43) The amount of franchise tax paid to the secretary of state  
16 by domestic corporations, foreign corporations, domestic limited liability  
17 companies, foreign limited liability companies, domestic limited partner-  
18 ship, foreign limited partnership, domestic limited liability partnerships  
19 and foreign limited liability partnerships.

20 (b) Except to the extent disclosure is otherwise required by law or as  
21 appropriate during the course of an administrative proceeding or on ap-  
22 peal from agency action, a public agency or officer shall not disclose fi-  
23 nancial information of a taxpayer which may be required or requested by  
24 a county appraiser or the director of property valuation to assist in the  
25 determination of the value of the taxpayer's property for ad valorem tax-  
26 ation purposes; or any financial information of a personal nature required  
27 or requested by a public agency or officer, including a name, job descrip-  
28 tion or title revealing the salary or other compensation of officers, em-  
29 ployees or applicants for employment with a firm, corporation or agency,  
30 except a public agency. Nothing contained herein shall be construed to  
31 prohibit the publication of statistics, so classified as to prevent identifi-  
32 cation of particular reports or returns and the items thereof.

33 (c) As used in this section, the term "cited or identified" shall not  
34 include a request to an employee of a public agency that a document be  
35 prepared.

36 (d) If a public record contains material which is not subject to dis-  
37 closure pursuant to this act, the public agency shall separate or delete  
38 such material and make available to the requester that material in the  
39 public record which is subject to disclosure pursuant to this act. If a public  
40 record is not subject to disclosure because it pertains to an identifiable  
41 individual, the public agency shall delete the identifying portions of the  
42 record and make available to the requester any remaining portions which  
43 are subject to disclosure pursuant to this act, unless the request is for a

1 record pertaining to a specific individual or to such a limited group of  
2 individuals that the individuals' identities are reasonably ascertainable, the  
3 public agency shall not be required to disclose those portions of the record  
4 which pertain to such individual or individuals.

5 (e) The provisions of this section shall not be construed to exempt  
6 from public disclosure statistical information not descriptive of any iden-  
7 tifiable person.

8 (f) Notwithstanding the provisions of subsection (a), any public rec-  
9 ord which has been in existence more than 70 years shall be open for  
10 inspection by any person unless disclosure of the record is specifically  
11 prohibited or restricted by federal law, state statute or rule of the Kansas  
12 supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and  
13 amendments thereto.

14 Sec. 3. K.S.A. 45-217 and K.S.A. 2001 Supp. 45-221 are hereby  
15 repealed.

16 Sec. 4. This act shall take effect and be in force from and after its  
17 publication in the statute book.

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