

Approved: 1-29-98
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:10 a.m. on January 27, 1998, in Room 254-E of the Capitol.

All members were present except:
Senator Nancey Harrington, excused

Committee staff present: Mary Galligan, Legislative Research Department
Robin Kempf, Legislative Research Department
Midge Donohue, Committee Secretary

Conferees appearing before the committee:
Mr. Doug Lawrence, Open Government Alliance, Burlington
Senator Stan Clark, Vice-Chair, Joint Committee on Computers &
Telecommunications
Mr. Jeff Fraser, General Manager, Information Network of Kansas

Others attending: See attached list.

Senator Oleen announced she had a request for introduction of a bill and introduced Mr. Doug Lawrence, Burlington.

Mr. Lawrence thanked the committee for the opportunity to appear on behalf of the Open Government Alliance. He explained that the Alliance is a coalition of individuals and organizations which share an interest in keeping government open to public access through strong open meetings and open records laws. Mr. Lawrence stated that he works with individuals and organizations who have a reason to interact with governmental entities. He said the interests among members of the Alliance are diverse, ranging from property tax, schools and the media and that an area of concern is the creation of entities by a public body which are intended to circumvent current state law involving open meetings.

Mr. Lawrence asked that **HB 2195** (1995 Session), relating to meetings and decision-making of public and quasi-public bodies required to be open to the public, be introduced as a senate bill.

Senator Schraad moved for introduction of the bill. The motion was seconded by Senator Jones. The motion carried.

Senator Oleen told the committee that following the briefing last week on **SB 393**, relating to the joint committee on computers and telecommunications and oversight of state agencies gathering or maintaining personal information, there were additional questions concerning the Open Records Act and the Information Network of Kansas. She stated that questions in this regard would be held until conferees on **SB 393** had an opportunity to speak, indicating she wished to accommodate the schedules of Senator Stan Clark and Representative Jim Morrison who were listed as conferees. Senator Oleen noted that the House was currently in session and indicated she would recognize Representative Morrison should he arrive.

The hearing was opened on:

SB 393 An act concerning recorded information gathered or maintained by state agencies; prescribing powers, duties and functions for the joint committee on computers and telecommunications

Senator Stan Clark, vice-chair of the joint committee on computers and telecommunications, a proponent of the bill, referenced the packet of information he provided and discussed the various attachments (Attachment #1). He explained that the Kansas Open Records Act requires each agency to maintain an index of information it keeps, as well as in what electronic form this data is available. Senator Clark told the committee that, as far as can be determined, only one state agency comes close to complying with this statute.

Senator Clark stood for questions at the conclusion of his testimony, and Senator Oleen asked for clarification regarding the Kansas Information Resource Council (KIRC); specifically, when it was created, how often the

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE, Room 254-E, Statehouse, at 11:10 a.m. on January 27, 1998.

Council meets, and if the Council would address the issues cited in Senator Clark's testimony. Senator Clark replied that the Council has been in existence approximately four to six years, meets approximately eight times annually and, in his opinion, addresses institutional policies and how the system works, rather than the legislative end.

Senator Becker inquired why Senator Clark believed state agencies were not in compliance with the Open Records act, and Senator Clark indicated he could only speculate at this time because he did not have the benefit of feedback from the various state agency Secretaries.

Senator Becker asked Senator Clark to address duplication of effort by state agencies in collecting data, and Senator Clark indicated that duplication was quite prevalent, referencing page 11 of the Orr report in the packet of information he provided (Attachment #1) for further explanation.

Senator Gooch commented on the number of times people are required to provide the same information and asked if it were possible to have one source for all of this information.

Senator Clark replied that he was one of those legislators that will not vote to put the social security number on any piece of information the state collects. He indicated that the individual social security number is the common link for all state agencies to come together with a complete history of an individual and, if this were done, the individual could get by without filling out all those forms. Senator Clark advised, however, that he did not want that common link.

When asked by a committee member why he felt this way, Senator Clark stated he wanted to keep the linkages as difficult to put together as possible. He went on to explain that he did not think his entire life should be an open book for everybody.

Senator Oleen added that is why she felt it would be important to have staff brief the committee on the Open Records Act so they would know what is actually public information.

Senator Oleen told the committee two conferees, Mr. Jeff Fraser and Mr. Doug Lawrence, were neither proponents or opponents of **SB 393** but were scheduled to offer comments on the bill for informational purposes:

Mr. Jeff Fraser, Network Manager, Information Network of Kansas (INK), thanked the committee for the opportunity to comment on **SB 393**. He said INK was created in 1990 for the purpose of providing electronic access to public information maintained in the State of Kansas, (Attachment #2) Mr. Fraser stated that INK maintains Kansas official internet presence and actively assists state agencies with making information available online in order to achieve the goals established by the legislature. As a result, he said individuals and businesses currently have access to a wide variety of public information online. He touched upon the responsibility of protecting the privacy of the citizens of Kansas, noting that information collection, retrieval and manipulation of information is much easier than ever before because of recent advancements in technology. Mr. Fraser stated that he believed the joint committee on computers and telecommunications is the appropriate committee to undertake this important responsibility.

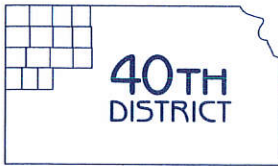
Mr. Fraser stood for questions and Senator Becker inquired about the requirements for subscribing to and obtaining information from INK. Mr. Fraser explained that all subscribers to the service are required to sign an agreement that they will abide by the rules, regulations and laws regarding access to public information under the Open Records Act. He discussed the categories of service and fees that apply, advising that there are 4,500 subscribers, 98% of which are Kansas businesses.

Senator Becker asked if he felt those individuals had a right to the information INK provided, and Mr. Fraser replied in the affirmative, saying that the information provided is the same that would be provided "over the counter" by the various state agencies. Senator Oleen pointed out that the briefing on the Open Records Act would address this issue.

Senator Oleen, noting the time, advised that the hearing on **SB 393** would be continued at a later date and told Mr. Fraser he would be invited back at that time.

Senator Oleen introduced Florian Hanne, Germany, and Martin Zovic, Slavonia, who are foreign exchange students at Topeka West High School and who served as pages today for the committee.

The meeting adjourned at 12:00 noon. The next meeting is scheduled for January 28, 1998.



COMMITTEE ASSIGNMENTS

VICE CHAIR: UTILITIES
COMPUTERS &
TELECOMMUNICATIONS
MEMBER: AGRICULTURE
FINANCIAL INSTITUTIONS
& INSURANCE
RULES & REGULATIONS

Stan Clark

TESTIMONY BEFORE THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE JANUARY 27, 1998

SB 393

Madam Chair and members of the committee. My attachment #1 by Kevin McCurley titled "Protecting Privacy and Information Integrity of Computerized Medical Information" outlines the issues involved with medical records privacy and the principles that can be applied to other areas of government records.

Attachment #2 is the first point from the outline of the previous attachment. According to McCurley there are 4 building blocks of security which are:

1. Technology
2. Legislation
3. Institutional policies
4. Education and Training

Of these 4 components I would like to emphasize the author's thoughts. Regarding Legislation the author writes: "...As our society becomes more dependent upon information, so too will we be vulnerable to threats from the abuse of information, and it is natural to expect some legislation and regulation of its use in order to protect society against this abuse. This was the basis for the enactment of the Privacy Act of 1974, which governs how government must protect information that it holds about individuals. It is time to revisit the rights of the individual regarding the use of information about them by other parties. An obvious place to start is with medical information."

Regarding his 3rd component Institutional policies: "Technology alone cannot protect against abuse of information, since it is only a tool to enable proper handling of information. Legislation cannot and should not regulate

every aspect of how information is treated. These gaps can be filled by crafting appropriate institutional policies to govern the use of technology and accomplish the broad guidelines established by legislation.”

The 4th component Education and training provides that “...users must still become informed of the proper use of technologies as well as their responsibilities.”

Attachment 3 is *A Report on Data Sharing and Administration* for the State of Kansas by the Ken Orr Institute. As Vice-Chair of the Computers and Telecommunications Committee I serve as a Legislative representative on the Kansas Information Resource Council (KIRC). This is a council whose members include all the Governor’s Cabinet, representatives from the State Board of Education, the Regent’s Universities, Judicial Branch, the KCC, Legislature, Criminal Justice area and private industry whose duties include the Institutional Policies McCurley emphasized.

On page 3 of this report, 2nd to the last paragraph it states: “The Kansas Open Records Act . . . **requires** each state agency to maintain an index of the information it keeps, and in what electronic form his data is available. As far as we have been able to determine, there is only one state agency which even comes close to complying with this statute: the Kansas Water Office. *We therefore recommend that the Data Sharing Subcommittee of ITAB be reconstituted to develop policy frameworks and plans to implement them that will bring State agencies into compliance with the act.*”

ITAB is an acronym for Information Technology Advisory Board, which is a Board composed of the computer experts in the various state agencies.

Page 10 of this report gives greater clarity to this open records issue.

Page 11 defines some of the obstacles.

Attachment 4 is Larry Buening, director of the Kansas Board of Healing Arts testimony before the interim committee. On page 4, 3rd paragraph he writes about 2 issues that he would like addressed.

“The first is a Federal District Court ruling issued in 1991 in a case entitled Bryant v. Hilst. . . . in the case the Judge specifically finds that a state statute making records “confidential” does not necessarily also make those records “privileged”. This case dealt specifically with “confidential” records of the Board of Healing Arts.

The second issue was “the collection and maintenance of information which is unrelated to the Board’ statutory stated mission”. His example was information collected for the Secretary of Health and Environment and for KU. He asked 6 pertinent questions:

1. Should information that may be inappropriate and not statutorily required for licenser be required to be provided for the application to be deemed complete?
2. If the answer to question #1 is yes, what is the mechanism to keep this confidential information separate from statutorily public information?
3. Should a licensing Board be mandated to collect and maintain personal information which it is not required to perform its statutory purpose?
4. How does a licensing Board mandate applicants and licensees to provide information not statutorily required by the Board to collect and maintain?
5. Who should bear the cost of gathering and maintaining the information?
6. Is it constitutionally and statutorily permissible for a licensing Board to utilize a portion of the fees it collects for a purpose other than regulation of the profession?

Attachment #5 is Richard Oxandale’s testimony to the interim committee. Mr. Oxandale is the general counsel for the Department of Revenue. On page 3 of his testimony regarding the confidentiality of Kansas Income Tax records, 3rd line, he states: “returns may be inspected by the Attorney General or other legal representatives of the State. The term ‘legal representatives of the state’, is not defined.”

On page 4 of his testimony Motor Fuel Tax he writes: “...for the purpose of determining whether an existing surety bond is sufficient, the Director of Taxation may require. . . a financial statement. Such financial

statement could contain personal information of the owner or proprietor. It appears there is no statute making this information confidential.

Attachment 6 is an article from October 9, 1997 from the Hays Daily News. This article brings us full circle with medical record confidentiality. The researcher found that 80 to 120 people may have access to medical records in a large hospital and a solution is proposed was, "a system that tracks who gains access to electronic records and then holds individuals accountable who look at records without a legitimate reason."

I will conclude my testimony by emphasizing the 4 building blocks of Security by Kevin McCurley - Technology - Legislation - Institutional Policies - and - Education and Training. Senate Bill 393 is the Interim Committee's attempt to create the "Legislative" component of this strategy. I think the Computer and Telecommunications Committee is the logical place to begin to address these issues. The committee can hold hearings and filter many of the issues and propose legislation. The committee cannot bring legislation to the floor of the Senate or the House. That can only be done through a standing committee. But, because of the filtering process and recommended course of action, it can plow considerable ground so that the standing committee can address very specific issues and determine if legislation is necessary.

Madam Chair, I will gladly stand for questions.

Protecting Privacy and Information Integrity of Computerized Medical Information

Kevin S. McCurley

Sandia National Laboratories

- The Four Building Blocks of Security
- The Ultimate Architecture for Computerized Medical Records
 - Data has to follow the people using it
 - The importance of universal networks
- Technology Tools for Securing Health Information
 - Access Control and User Authentication
 - Passwords
 - Biometric user authentication
 - Tokens and Badges for User Authentication
 - One-time passwords
 - Network Authentication: Kerberos
 - The Role of Firewalls
 - Data authentication
 - Digital Signatures
 - Biometric User Authentication vs. Data Authentication
 - Tokens dumb and smart
 - Key Management
 - Key Management Issues for Public Key Cryptography
 - The Real Importance of Key Escrow
 - Audit Trails
 - Digital Notary Timestamp Services
- Evaluation and Design of Appropriate Security
 - What are the risks?
 - What are the Threats?
 - What will security cost?
- What Barriers Remain?
 - Some Legal Issues
 - National Policy on Information Security Technologies
 - Who is the customer?
- Summary
- References
- About this document ...

Kevin S. McCurley

Sat Mar 11 16:00:15 MST 1995

The Four Building Blocks of Security

There can be no doubt that the health care system as it exists today in the United States has some severe problems. Many of these problems are aggravated by the manner in which information is typically managed. Paradoxically, this mismanagement has contributed to protecting the integrity and privacy of medical records by making the information difficult to retrieve and use. As we enter the age of computerized medical information, this situation will change dramatically, and threats to individual privacy and health will become more serious unless systems are designed and managed intelligently. It is therefore important that during the design of such systems, we give appropriate level of attention to these security issues, and carry out some careful planning for the future.

There are four key components required for the protection of computerized medical information. They are:

Technology

A wide range of technologies exist that can be used to protect medical information from improper use, dissemination, or modification. This will be the major topic of discussion in the paper. I will attempt to describe how technologies currently work, some current trends, and how I expect them to evolve in the future. Briefly, I expect a lot of money to be wasted on "closed systems" that are later discarded in favor of systems that adhere to open, non-proprietary standards.

Legislation

When automobiles were first invented, they represented very little physical threat to humans because they were rare and the threats were very small. As automobiles became woven into the fabric of our society, so too did the threats, including pollution and threats to our personal safety. Legislation was drafted to regulate their use in order to protect society from autos. As our society becomes more dependent upon information, so too will we be vulnerable to threats from the abuse of information, and it is natural to expect some legislation and regulation of its use in order to protect society against this abuse. This was the basis for the enactment of the Privacy Act of 1974, which governs how government must protect information that it holds about individuals. It is time to revisit the rights of the individual regarding the use of information about them by other parties. An obvious place to start is with medical information.

Institutional Policies

Technology alone cannot protect against abuse of information, since it is only a tool to enable proper handling of information. Legislation cannot and should not regulate every aspect of how information is treated. These gaps can be filled by crafting appropriate institutional policies to govern the use of technology and accomplish the broad guidelines established by legislation. On the other hand, if institutional policies alone are relied upon without legislation, then it will remain tempting for institutions to use very weak protections, particularly if it requires them to invest time or money (just as physical security against crime and invasion is not free, so too is security against invasions to our privacy). If institutional policies are used without appropriate technology, then the policies can be broken too easily. It should be mentioned that ongoing system administration of these policies will be required for effective use. Standards such as the ASTM 31.20 authentication standard should play an important role in forming such policies.

Education and training

When appropriate technologies, legislation, and policies are put in place, users must still become informed of the proper use of technologies as well as their responsibilities. This will be an ongoing activity within each organization, particularly as new technology is added to enhance the capabilities of the system and new users enter the system.

If any one of these is neglected, then the others are likely to have too many demands placed on them to succeed. My own background is in the technology side of things, and much more information will be given later about this.

[\[Next\]](#) [\[Up\]](#) [\[Previous\]](#)

Next: [The Ultimate Architecture](#) **Up:** [Protecting Privacy and Information](#) **Previous:** [Protecting Privacy and Information](#)

[Kevin S. McCurley](#)

Sat Mar 11 16:00:15 MST 1995

A Report on Data Sharing and Administration
Final Draft

prepared for
The State of Kansas

by
The Ken Orr Institute
December 12, 1997

Table of Contents

TABLE OF CONTENTS	2
EXECUTIVE OVERVIEW	3
BACKGROUND	4
A Strategic Vision for Information Technology (The SIM Plan)	4
The needs and demands to share data	5
Developing Strategies, Architectures and Policies for Data Sharing	6
PART 1: DATA SHARING REQUIREMENTS	8
Introduction	8
General Data Sharing Requirements	8
Specific Data Sharing Requirements	9
Open Records Act Requirement	10
Obstacles to Data Sharing	11
PART 2: ITAB RECOMMENDATIONS	12
The Data Sharing Committee	12
The Executive Steering Committee	13
The Working Group	13
PART 3: PRIVACY AND CONFIDENTIALITY CONSIDERATIONS	15
Introduction	15
Trends	15
Open Issues	16
Recommendations	17
APPENDICES	18
Appendix 1: The Study Methodology	18
Appendix 2: Florida Data Administration/Data Sharing Policy Framework Checklist	20
Appendix 3: Kansas Open Records Act	24
Appendix 4: KIRC Policy #8000	31
Appendix 4: Major Technology Issues Document (November 15, 1994)	34
Appendix 5: Washington Privacy Statement	35

Executive Overview

Background

Approximately three years ago, a committee was established in the State of Kansas to investigate opportunities for data sharing. While some data sharing applications have been identified and implemented in the State, there has been some concern that there were additional data sharing requirements that were unknown. To that end, we were asked to look into data sharing requirements for the State.

The Study

For this study, we investigated the "requirements" for data sharing in the State of Kansas. Webster defines the word *requirement* as something demanded as necessary or essential. Therefore in looking for data sharing requirements we focused on two potential areas:

- Are there significant problems that are being caused by a lack of data sharing?
- Are there significant opportunities for improvement that could be realized by increased data sharing?

In both cases an important litmus test is one of funding: is either the problem or the opportunity great enough to interest someone in investing state funds to deal with it.

Conclusions and Recommendations

Many State Agencies do a credible job of data sharing and others whose data sharing activities could use improvement. Though we did not find any driving demand for increased data sharing, nor any insurmountable problems due to a lack of it, we did find that there are additional data sharing applications that bear further investigation. *We recommend that the State continue to pursue policies which encourage data sharing, and continue to update guidelines and policies that further Agency participation in data sharing projects.* There is potential to use recent "data warehousing" technology to facilitate access to public data while at the same time improving confidentiality and security protocols. One specific area that was identified as a potential data sharing project involves State administrative data that is collected via "Stars" and "Sharp." Several agencies expressed frustration at their inability to access information collected in these systems. *We would therefore recommend that the State consider a project developing a "data mart" or "data warehouse" -type interface to these administrative systems.* See the section of the report beginning on Page 6 entitled **Developing Strategies, Architectures and Policies for Data Sharing**

The Kansas Open Records Act (K.S.A. 45-215 through 45-223) mandates that most data collected by the State be made available to the general public (See Appendix 3). In addition, the act **requires** each state agency to maintain an index of the information it keeps, and in what electronic form this data is available (K.S.A. 45-221 16a-16b). As far as we have been able to determine, there is only one state agency which even comes close to complying with this statute: the Kansas Water Office. *We therefore recommend that the Data Sharing Subcommittee of ITAB be reconstituted to develop policy frameworks and plans to implement them that will bring State agencies into compliance with the act.*

Additionally, we recommend that the State of Kansas adopt a public policy framework concerning commercial access to government electronic records, similar to those adopted by the State of Washington (see the Recommendations section beginning on Page 17).

"Kansas government has an opportunity to take advantage of these (IT) trends, rather than being overwhelmed by them."

The Kansas SIM Plan (1996)

Background

A Strategic Vision for Information Technology (The SIM Plan)

In 1996, the State of Kansas commissioned a study to develop a Strategic Information Management Plan (SIM Plan). In that study, a number of fundamental ideas surfaced regarding the importance of Information Technology (IT) to the State of Kansas:

- *Information technology is especially important to the State's economic development and the quality of life for its citizens*
- *The State has the responsibility to use information technology wisely to improve services and provide citizens access to public information*
- *It should be easy to do business with the State—no mystery, no obstructions*

From these fundamental ideas, a strategic vision was identified which encompassed the following concepts:

- *Every Kansas citizen and business can access needed Kansas government information and services electronically*
- *Every branch and level of Kansas government is connected electronically (internally and externally)*
- *Every tax dollar is maximized through cooperation, coordination, and resource-sharing of Kansas government agencies, which are, in turn, supported by cost-effective information technology*

In order to achieve these visions, four outcomes were identified:

- *Providing a common view of the way IT should be utilized in the State*
- *Providing improved guidelines for agency development of information*
- *Reducing the barriers to cooperation and information sharing*
- *Optimizing the use of the State's IT resources*

In addition, the SIM Plan identified four technology trends that will affect IT in the next decade:

- *Computers at all levels will continue to become more powerful and affordable*
- *Computer-based, multi-media networking will be the basis for all forms of communication and data access*
- *Electronic commerce will become the preferred mode of doing business*
- *Growing computer sophistication of the by children and adults of all ages*

The needs and demands to share data

Over the past two decades, profound changes have occurred in the way government in the United States operates. For example, State governments are being called to take over more and more Federal government services while at the same time local/regional governmental organizations and private business are increasingly being given responsibility for operating what used to be State programs. Many of these new programs place increased emphasis on sharing of data between more and more agencies.

Technology has contributed to making data sharing an opportunity as well as a burden. Computer/communication technology via the Internet now makes it possible to access computerized data from anywhere at any time. Citizens, businessmen and state employees are being exposed to intelligent data sharing in their private dealings with the Internet. With the appropriate safeguards, the public is learning that it should be possible to get at any computerized information and manipulate that information for a variety of purposes.

The creation and growth of the Information Network of Kansas (INK), for example, shows that there is a significant market for public information beyond the traditional forms of paper access. Professionals are willing to pay for on-line access to public information, and they are more than a little interested in doing all their business with the State electronically (electronic commerce).

But, for the State of Kansas to leverage the productivity and improved services that advanced IT promises, state agencies will need, in the future, to do a much better job of sharing data with other organizations, both inside and outside the State. Currently, the State spends enormous amounts of money collecting and processing information about a whole range of subjects, and much of that expenditure is duplicated and wasteful because the same information is captured multiple times.

But data sharing is neither free nor without risk. Many organizations are reluctant to share data because they fear a lack of control. In addition, there is more and more concern about the issues of privacy, confidentiality and security of data (see Part 3). These fears are in some conflict with the American tradition of "open government" and "open records". The move to the world of the Information Superhighway is fraught with significant difficulties.

Developing Strategies, Architectures and Policies for Data Sharing

Kansas, like most other state governments and many large organizations, treats the interaction with the outside world on a "one-to-one" basis. This tends to create an enormously complex, and expensive, web of interactions between all of the various parties (Figure 1).

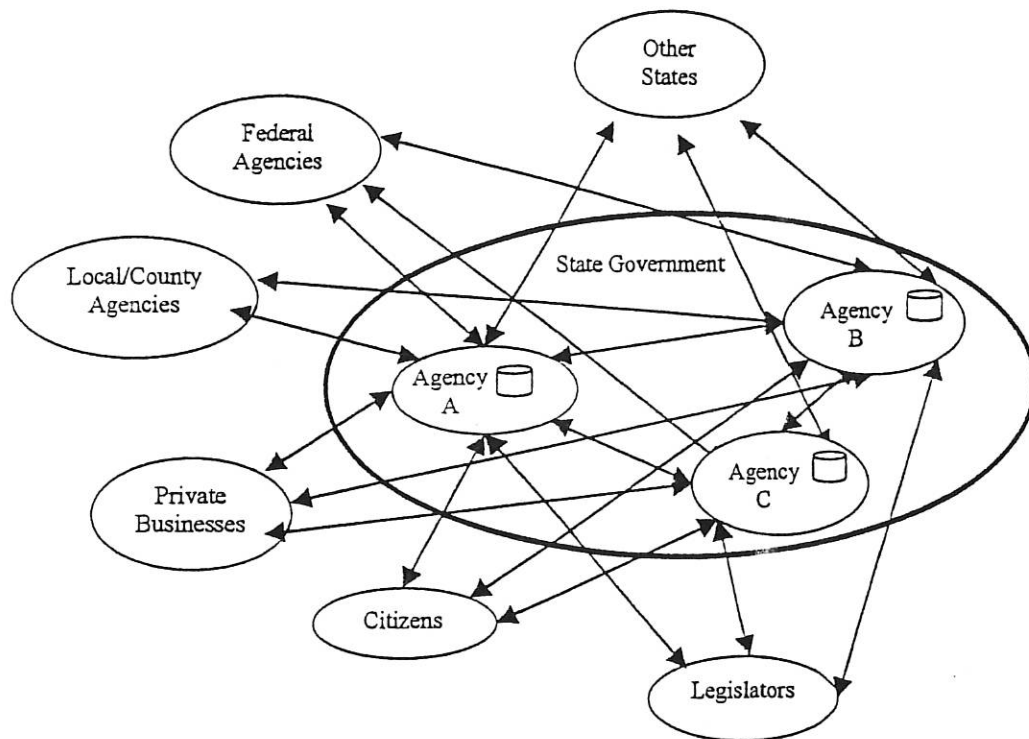


Figure 1

Each time new information is required, the interested party is required to contact a specific agency or division and develop a singular interface with that data. This often requires that a new computer interface (link) must be developed. The next time information is required, a new interface must be developed. Not surprisingly, agencies are not eager to create new programs of this kind.

In recent years, large organizations around the world are moving increasingly to develop specialized "data warehouses" or "data marts" that are intended to promote data sharing. A framework such as the one shown in Figure 2 would identify a series of data marts or data warehouses that would be used as either a temporary or permanent data base for data sharing. By developing such an architecture, the State would protect its operational data from direct access, it could impose strict data quality and data security controls, and it could make the data available to all of those required to access the data via the Internet, or more likely, State controlled Intranets or Extranets.

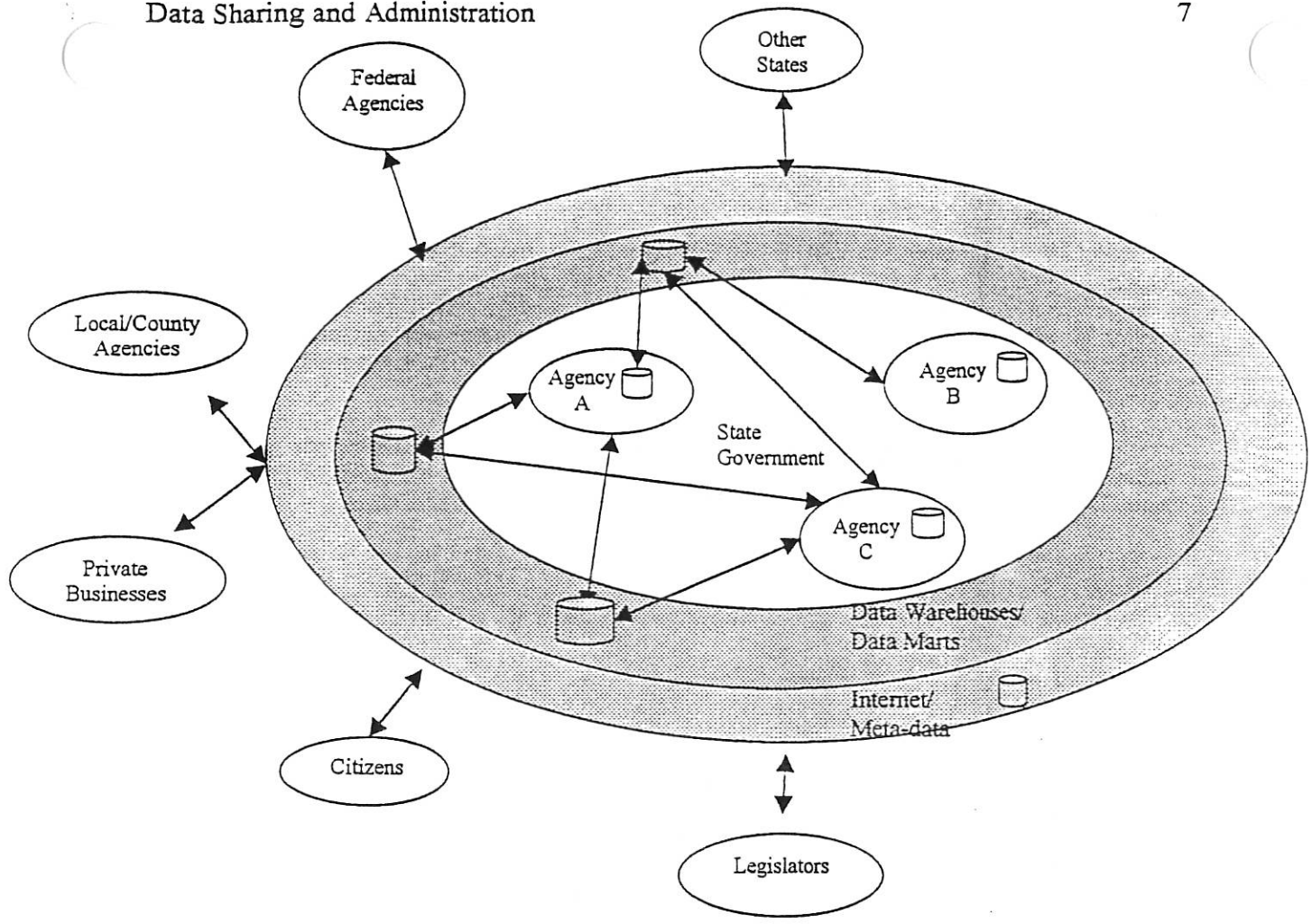


Figure 2

An data sharing architecture such as the one above would make it possible for the State to expand its existing data sharing activities such as GIS and CJIS and expand activities as organizations and agencies become more experienced.

Part 1: Data Sharing Requirements

Introduction

The information in this report was collected via interviews with members of State government and other research. We interviewed many of the members of the ITAB committee itself to obtain an "insiders" view of the problems and opportunities. We also interviewed several current and former state legislators to obtain a more general perspective. We also spoke with a few business people working on various projects with the state. A complete list of interviewees and a list of the discussion questions appears in Appendix 1 on The Study Methodology.

In order to examine data sharing requirements, we had to define two fundamental issues: what is "data sharing" and what are "requirements." We assumed that data sharing was more than just the free flow of data from one state agency to another. In fact, we identified several areas of data sharing:

- State Inter-agency
- State and Local Government
- State and Federal Government
- Interstate
- Legislative
- Public
- Business

Webster defines the word *requirement* as something demanded as necessary or essential. Therefore in looking for data sharing requirements we focused on two potential areas:

- Are there problems that are being caused by a lack of data sharing?
- Are there significant opportunities for improvement that could be realized by increased data sharing?

In both cases an important litmus test is one of funding: is either the problem or the opportunity great enough to interest someone in investing state funds to deal with it? We have organized our findings into two categories: general data sharing requirements and specific data sharing requirements.

General Data Sharing Requirements

The State of Kansas Strategic Information Management Plan (SIM-Plan) created in early 1997 defines several broad areas of data sharing requirements as long-term goals for the state. The vision for the SIM-Plan has three points:

- Every Kansas citizen and business can access needed Kansas government information and services electronically.
- Every branch and level of Kansas government can exchange and access information electronically, both internally within government and externally throughout the state, nation, and world.
- Every tax dollar is maximized through cooperation, coordination, and resource sharing within Kansas government, supported by cost-effective information technology.

It is clear from this data sharing study that the state is still far from these long-term goals. We did find several issues that were germane, however.

With regard to point one: electronic access by citizens and businesses. Through the Information Network of Kansas (INK) web site, the public and business community have access to a wide range of State data via the Internet. However, there are some interesting issues with making data available to the public in this manner.

Timeliness: While some of the premium services available for a fee from INK do a “data dip” directly into state files, most of the information available on INK is provided by the various agencies via tape or FTP weekly or monthly. This strategy has the potential to exacerbate the public’s perception of state data management. Without some kind of caveat attached to the data (i.e., “Deposits made after 3:00pm are not credited until the next business day”), a member of the public viewing the data via INK may believe that the state has made an error in updating their data, or may not have updated their data at all.

Target Audience: Much of the information of value to the general public—job postings, benefit information, public announcements, and so on—are often targeted at the needy or indigent. Unfortunately it is this segment of the population that is least likely to have access to the Internet.

Funding: INK management believes that it has “mined” a majority of the revenue-producing opportunities for state data. Whether this statement is true or not is problematic, but it does point out one interesting problem: where will the funding come from to implement all of the remaining non-revenue-producing applications needed for full electronic access?

Access: As with any new endeavor there are often unforeseen complications and problems. In addition to all of the normal privacy and confidentiality concerns that are inherent to an Internet presentation of state data, there is always potential for the use of state data in a manner detrimental to the state. For instance, a directory of state employees was removed from INK when it was discovered that recruiters were using the information to prospect for clients.

With regard to point two: electronic interchange with other governmental entities. While significant infrastructure is in place for electronic interchange and access, some challenges remain. Electronic access is most problematic in the rural counties far from the population centers of the state, but there are other issues closer to home.

Firewalls: Many of the big state agencies have branches outside of Topeka. However, Internet firewalls are often installed locally in Topeka, complicating access by remote branches. Some functions available to users behind the in Topeka firewall may be unavailable at remote sites; direct access by remote sites bypassing the firewall poses a security risk for unauthorized access to sensitive data.

Network Access: While the Kansas backbone network KANWIN connects all 105 counties, not all state computers are connected. Additionally, many local agencies are incapable of transmitting information to the state electronically, either because of a lack of automation or because of a lack of connectivity. Although access to the Internet is improving, it is far from ubiquitous. Though many agencies have e-mail, not all employees of the state have e-mail. Further, e-mail is generally administered on an agency-by-agency basis instead of through a centralized state function. This has resulted in a hodge-podge of e-mail systems and addressing schemes.

Specific Data Sharing Requirements

In general, we found what one might have expected: Data sharing is good in areas where it makes economic and political sense, and poor in areas where there is little or no economic benefit and/or there is a high political risk. However, some common themes emerged.

Administrative Data: One of the most common problems mentioned during our interviews was a perceived inability to get good administrative data from the state personnel and general ledger systems: SHARP and STARS, respectively. Several members of the ITAB noted that it was difficult to obtain information from either of these systems for tracking or planning purposes. Further, since each of the agencies input a significant amount of data into those systems, they often perceive the information as “theirs” and are puzzled as to why they can’t get summary information back from the systems.

This seems to be a natural target for improved data sharing. It would benefit a wide audience and would not appear to involve "sensitive" data (since the spending and payroll information originates in the agency to begin with).

Legislative Data Needs: In talking to legislators, we found a common concern over the quality of the data available relating to education. While State spending on Education is a high-dollar item, no one seemed satisfied with either the quantity or the quality of the data available on educational services. In part because this has to do with the fact that much of the critical data resides in local school districts and in various institutions of higher learning.

Legislative Systems: Another common theme from the legislative interviews was one of poor systems. The system used by the legislature for the management and tracking of bills is technologically obsolete and does not accept nor provide information in a format common to most current systems. However, at the same time, the legislature seems reluctant to authorize the funds for replacement of their system at this time.

Inter-Agency Sharing: Sharing between agencies is much better in some areas than others. Non-personal data, such as geophysical information, was very well shared across organizations. On the other hand, information about individuals, particularly health and public assistance information, was not very well shared. In many cases, the isolation of this data from other agencies (and from other systems within agencies) is mandated by federal law.

Open Records Act Requirement

The most stringent requirement for data sharing is mandated by the Kansas Open Records Act (K.S.A. 45-215 through 45-223). The Open Records Act basically states that all State data shall be open, with some exceptions. The exceptions are rather extensive, and somewhat obtuse, since buried deep in one of the exception clauses is the following:

"45-221: (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose: (...various exceptions omitted...)

(16) Software programs for electronic data processing and documentation thereof, *but each public agency shall maintain a register, open to the public, that describes:*

(A) The information which the agency maintains on computer facilities; and

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

So while Agencies are not required to disclose the software they use, they *are* required to make public a register describing the information that is kept and the electronic form in which it can be made available.

As far as we could ascertain, there are few, if any, agencies in the state which are in full compliance with this provision of the statute. The only agency which approaches having a full index of it's public data is the Kansas Water Office, which has done an excellent job of developing and publishing a comprehensive meta-data repository on INK.

Beyond the obvious economic benefits of data sharing stated earlier, this statutory requirement seems the most compelling reason to recommend action on the part of state agencies.

December 12, 1997

Obstacles to Data Sharing

Multi-agency, multi-year: Experience has shown that multi-agency, multi-year projects are the most difficult to get funded in the State budgeting process. While there are exceptions, the state budgeting process is tailored to deal with single agency, single year activities. The exception to this is capital expenses, which usually requires multi-year funding, but data sharing activities are often seen as fitting this financial model. But, to be successful, most data sharing projects require cooperation between multiple agencies spread over a number of years.

Loss of control: One of the underlying reasons that Legislators and budget analysts are reluctant to fund inter-agency activities is the need to hold someone responsible for projects. With multi-agency projects it is often difficult to assign responsibilities, even where there is clearly a lead agency.

Privacy , confidentiality, and security: Probably the most significant problem involved with data sharing, especially with respect to sensitive and/or personal data, is the issue of privacy and confidentiality. Privacy is primarily a question of the right to keep information private to the individual. Confidentiality has to do with the agreement between the source of data and the agency collecting that data. Security involves making sure that the privacy and security agreements are met.

While it can be argued that public data is no different when placed on a computer that it is when on a hand-written or type-written form, everyone understands that things are possible today with modern computers and communications that would not have even been possible just a few years ago. The publicity of the Internet and the fear of computer hackers has raised the awareness of any program that purports to integrate and share data about individuals or individual businesses. Not surprisingly, it is just in these areas that the most significant data sharing opportunities actually exist.

Part 2: ITAB Recommendations

The Data Sharing Committee

In late 1994 the ITAB produced a document titled "Major Technology Issues in the State of Kansas" that was presented to the KIRC (a copy of the document is included in Appendix 5 to this document). Although the majority of the document concerns issues unrelated to this study, two important issues were discussed that are germane, and were the basis for the formation of the current Data Sharing subcommittee of ITAB. The two issues concerned were Data Administration and Data Sharing. The report made the following statements:

"ISSUE: Common Structure for Information

In the past, limited attention has been given to common definitions of data. This occurred since each agency defined their own data and there was little need to share information across agency lines. There is an increasing need to share information to be able to conduct an agency's business. This is impeded if the data does not have the same structure and definition.

Through the activities of INK some of this data structure is being determined. In other cases this definition is being done on an agency by agency basis."

"ISSUE: Information Sharing

Agencies have existing systems which were established to serve a particular purpose. These systems were agency specific and met the needs of that agency. There is now a greater emphasis on the sharing of data between agencies to conduct the business of the state. This sharing of information is often difficult since the data definitions may be different (i.e. In one location a name may be first name, middle initial, last name in another agency system the name may be last name, initials) or the field lengths may vary (i.e. 20 or 15 characters for the last name). Each agency also has a significant investment in the creating and storing of this data."

In light of what was discovered during our study, we would like to address some of the assumptions that were stated in this report, and make some recommendations for the Data Sharing committee.

Assumptions: "There is an increasing need to share information to be able to conduct an agency's business." "There is now a greater emphasis on the sharing of data between agencies to conduct the business of the state."

From the interviews we conducted, we found little evidence to support these statements. In each of the interviews, we specifically asked for instances where State business was being impaired due to the lack of data sharing. The sentiment generally expressed was that no business functions were being prohibited or significantly impeded due to a lack of information sharing. There were, however, instances stated in which increased sharing was perceived as necessary to more effective processing.

Assumption: "This (information sharing) is impeded if the data does not have the same structure and definition."

While this statement is generally correct, many new Data Warehousing tools have emerged since the writing of this report which ameliorate to some extent differences in data structures between two or more disparate data stores. The lack of data definitions, and inconsistencies between different definitions of the

December 12, 1997

same data is indeed a severe impediment. In fact, the lack of data definitions at most Agencies is in clear conflict with the Kansas Open Records act.

Assumption: "This sharing of information is often difficult since the data definitions may be different..."

What we found in most cases is that when data sharing opportunities were identified, inconsistency in data definitions was not the principal problem: once again the *lack* of data definitions was the basis for the most difficulty. Establishing data definitions is time consuming and costly unless it is done during the analysis and design phase of a system. Thus, the newer systems we looked at tended to have much better data definitions than older systems. There appears to be little incentive for agencies to document so-called legacy systems for which adequate meta-data is not currently available.

Agencies that have initiated projects requiring substantial data sharing indicated to us in these interviews that these problems are quite solvable. *given sufficient economic or political incentive.*

Given that the assumptions that led to the formation of the Data Sharing committee in 1994 may no longer be entirely valid, we recommend that the committee be slightly reorganized and its mission more focused. Specifically, we recommend that ITAB consider creating two committees instead of the single committee that exists today: an executive steering committee and a meta-data working group. The two committees would each have a different mission.

- The Executive Steering committee should be charged with developing Data Administration/Data Sharing policy framework for the State of Kansas and developing a business case to justify acting upon the policies. The steering committee should also oversee the activities of the working group and direct its efforts.
- The Data Sharing Working group should initially be charged with developing a meta-data standard for a high-level Government Information Locator Service (GILS) that agencies will use to meet the requirements of the Open Records Act. Subsequent work by this committee will be at the direction of the Steering committee, and will presumably involve the creation of statewide standards to implement the Data Administration/Data Sharing policies established.

The makeup and the responsibilities of each of these committees is discussed in the following section.

The Executive Steering Committee

Ideally, the executive steering committee should be composed of a small group (three or four) of senior members of ITAB. This group should initially draft a policy framework for Data Administration and Data Sharing. This plan should also include business case justifying the policy framework to be established. This group should then develop a plan for a series of projects to implement the policy framework. The plan should identify the tasks that must be done by the state (such as global policy and procedure standards) and each of its agencies (such as a specific agency's meta-data definition). Any relevant information developed as part of this framework should be incorporated into KIRC Policy #8000 on Data Administration.

While the specific policy framework will be established by the committee, a good check list for Data Administration policy has been established by the State of Florida, and is included as Appendix 2 to this document.

The Working Group

The Data Sharing Working group should be formed from the nucleus of current members of the Data Sharing committee. This group should develop a plan for the establishment of a Government Information

December 12, 1997

Locator Service (GILS) type meta-data standard. This standard should be published and used by each State Agency to develop a high-level index of data kept by the Agency. This will bring the Agencies into compliance with the current Open Records act.

This group should also be given sufficient resources to publish and maintain the meta-data. This will likely require dedicated resources, both in terms of computer hardware, database management systems (DBMS) support, and personnel. In order to develop the meta-data repository and to maintain it, we would anticipate that a full-time Programmer/Analyst resource and a full time Technical Writer/Documentation Librarian would be required.

It would seem reasonable that the Executive Committee could be established and the Data Administration/Data Sharing plan could be completed during the current fiscal year. It would also seem reasonable that the Working Group could complete the meta-data standard within the current fiscal year. Funding and further development of the meta-data repository could then be scheduled for fiscal 1999.

December 12, 1997

Part 3: Privacy and Confidentiality Considerations

Introduction

There is a fundamental tension between data confidentiality and freedom of information. While citizens and businesses have a right to keep their data confidential, the State may also have a right to collect and share critical information. While the Open Records act requires most State data to be public, this must be balanced against the cost of providing such data to citizens, to businesses, and to the media. Further, there is some perception that the State has a right to recoup some of its cost of collection data by selling that information to business concerns. This data is often extremely valuable to certain business enterprises, and this revenue can help ameliorate the tax burden to citizens and businesses.

Unfortunately, data sharing often involves using data for purposes other than for which it was collected. Further, one cannot always anticipate how data collected for one purpose will be used by third parties. The ability to link data from a variety of external data sources (credit bureaus, medical records, financial purchases, etc.) to assemble a comprehensive electronic dossier on an individual should be a sobering prospect.

Data Security and Privacy is currently a dynamic and controversial subject. This was magnified recently by the widespread publicity surrounding the "opt out" program implementation in September 1997. The Kansas Open Records act, and many of the other statutes and regulations that define public access to data were written before Internet access to data became widespread. What were adequate safeguards and guidelines in the past are clearly inadequate for the electronic age.

The world is currently undergoing a in a monumental shift in the way it does business. The focus of business is shifting away from moving atoms (things) towards moving bits (data). It is also shifting away from doing business almost exclusively on paper to doing nearly all business electronically. Government at all levels will need to be much more responsive in this new environment. As of October of 1997, statistics indicate that 40% of American homes have a PC of some kind, while 19% are on-line with an ISP. Both percentages are increasing, but are today no where near the market penetration of television (93% of homes) or telephones (97% of homes). PC literacy is routinely taught in schools, and the Internet is rapidly becoming a basic communications infrastructure. The ubiquitous use of e-mail and electronic commerce will require new policies. Serious thought must be given to what constitutes an "open record" in the Internet age.

Trends

Despite the rapidly changing face of the privacy landscape, some trends are emerging.

- Personal access to personal data

Citizens expect that personal data collected by the State should be available to them without undue restriction and at low (or no) cost.

- Ability of the individual to challenge data is becoming easier

The "burden of proof" for validating data held on an individual is shifting to the data collector instead of the individual himself. Recent changes to credit reporting require that the credit bureaus validate disputed data or remove it from personal files. Legislation requiring the IRS to do the same has passed the U.S. House of Representatives and may be taken up by the Senate this spring.

December 12, 1997

- There is increasing awareness of the right of the individual to restrict the sale/distribution of personal data

The "opt out" program mandated by the Federal government requires States to give it's citizens the right to restrict the sale of personal information held by the State. Since it's implementation in Kansas this year, approximately 40% of drivers have "opted out," and legislators expect that percentage to ultimately peak as high as 80%.

- Towards criminalization of inappropriate institutional browsing

Recent changes were made to the IRS code to criminalize mere access of taxpayer data by IRS personnel. While this may be an extreme reaction to public sentiment, it seems clear that there should be a distinction between inappropriate and criminal access to personal data. There is however, no clear consensus on the ethics surrounding data access.

- Limitation of the use of data for purposes other than for which it was collected

Government is realizing that combining data from different data sources can yield information that has the potential to be abused. The case of a banker in Massachusetts who cancelled loans based on cancer patient records he obtained while serving on a State medical review board was cited in a Time magazine cover story recently.

- Data should not be used to discriminate

In addition to abuses such as the just given, there are concerns being raised over the fair use of genetic information, for instance. It is generally held that insurance companies should not be able to deny coverage based on a genetic predisposition to certain diseases.

Open Issues

While these trends are helpful in understanding some of the direction the State should take with respect to data privacy and confidentiality, there are still many open issues.

- What is "reasonable cost?"

While the Open Records Act provides for access to public data, there are no clear guidelines for what is a reasonable cost to "access" that data, especially in an electronic fashion. And while there is an argument that says that taxpayers have financed the collection of data and therefore should have access to that data at low (or no) cost, what about access to the data by non-taxpayers (residents of other states or other countries)?

- Should the individual be allowed to defraud (lie to) the State?

There has historically been a viewpoint that, to some extent, an individual should be able to lie to the State. However, if the State is providing services to an individual, what measures can it take to validate the identity of the individual? Can the State, for instance, require a retinal scan to be given before services are provided? To what extent does the State have a right to be able to decrypt secure communications, and to what extent do citizens and businesses have right to secure such communication? These are issues that are currently being debated in Congress, and there are no easy answers.

Recommendations

In 1996, the State of Washington commissioned a working group to look at the issues surrounding public data. The entire report is included as Appendix 6. To summarize, the group developed 10 principles which formed the basic for a public data policy framework.

Principle 1: Digital technology changes the nature of public records themselves, bringing with it the prospect for greater governmental efficiencies and the need for additional safeguards to protect personally identifiable information.

Principle 2: Public records are a public trust. The ownership of those records should not be transferred to other parties. The universe of public records subject to disclosure is defined by statute.

Principle 3: The highest public benefit from public records is when they are used to further a public mission. The public-benefit test of remaining within their "original orbit" — that is, use that advances an agency's public mission — is useful in determining legitimate governmental or business uses of information.

Principle 4: Government has a duty to safeguard the personally identifiable information of ordinary citizens from abuse. The duty extends to the notification of individuals of the procedures in place for the inspection of information held about them.

Principle 5: Policies to safeguard personally identifiable information must balance business and government needs for access to information with an individual's expectations of privacy.

Principle 6: Government should not restrict access to information about the performance of public institutions or about public policy.

Principle 7: The public should not have to pay to inspect information collected by government at taxpayer expense.

Principle 8: Financial disincentives should not be used to restrict access to government information.

Principle 9: Cost recovery for commercial access should be based on providing enhanced access, not the "selling" of public records.

Principle 10: Agencies should not be required to provide enhanced electronic delivery of information for commercial or business purposes unless they can charge fees to recover a reasonable portion of the costs of developing and maintaining information systems.

We would recommend that the State of Kansas consider these principles, and adopt something similar as a framework for public policy.

December 12, 1997

Appendices

Appendix 1: The Study Methodology

Our objective in this study was to obtain a broad cross-section of opinions regarding the state of data sharing by the State. We began with the ITAB committee itself to obtain an “insider’s” view of the issues, and branched out to include several current and former legislators to try to get a feel for the “data consumer’s” point of view. For the members of the ITAB committee and other IT professionals, we used the following series of questions as our basis for discussions:

IT Professional Questions:

- What is the demand for your data by the public? Business? Other governmental entities?
- Are there specific business functions that are being impeded due of a lack of data sharing?
- Are you providing any data for INK?
- Are you sending data to other organizations?
- Are you getting data from some other organizations?
- Are there any data sharing/data warehouse projects ongoing?
- Are there any specific statutes regarding privacy and your data?
- Do you have any high-level data models? If so, in what form are the models kept?

For legislators and other non-IT professionals, the questions were as follows:

- What is your perception of the state of “data sharing” within the State of Kansas? Does the State manage data effectively?
- In your opinion, where does the State need to improve its data availability? To the public? To the business community?
- Are you hearing any comments from your constituents regarding data availability, data collection, or data privacy?
- From a legislative perspective, what areas do you feel you receive inadequate or incomplete information?
- How would you rate your own computer literacy? Do you use the Internet at home or in your own business?
- Do you foresee the need for legislation to correct data availability and/or privacy issues within the State?

Interviews were conducted with the following people:

ITAB Member Interviews:

Dave Schrader – Department of Revenue (with Glen Yancy)

December 12, 1997

Ben Nelson – KDOT
Hank Sipple – Department of Agriculture
Don Heiman – DISC
Rick Miller – Water Office
Steve Tallen – Human Resources (with Wayne Thomas, Jim Ingerson)
Jeff Frasier – INK
Ron Rohrer – KBI
Jon McKensie – Kansas Corporation Commission
Hugh Zavadil – Administrator for the Courts
Jeff Lewis – Department of Corrections (with Cathy Clayton)
Tim Blevins, Sandra Hazlett – SRS
Jim Green – Health and Environment

Data Sharing Committee Interviews

Roberta Giovaninni – Department of Administration
Preston Barton – Council on Developmental Disabilities

Legislature

Representative George Dean – 96th District
Representative Jim Morrison - 121st District
Senator Stan Clark – District 40
Senator Rich Becker – District 9

Other

Kathleen Sadelius – Insurance Commissioner, former Legislator
Dick Knowlton – Kansas Lottery
Pete Kitch – Sedgwick County Health Dept. Contractor
Julien Efirid – Legislative Research

Appendix 2: Florida Data Administration/Data Sharing Policy Framework Checklist

A complete copy of this document can be found on the State of Florida web site at <http://mail.irm.state.fl.us/pubs/dachklst.html>.

Data Administration Program Status and Planning Checklist

AGENCY NAME: _____

Part 1 - Policy Statement

Each agency shall produce an Agency Data Administration Policy statement that incorporates the recommendations of the Information Resource Commission (IRC), and goals, objectives, and methods oriented towards accomplishing the objectives of the state policy. The Agency Data Administration Policy shall address the development and implementation of standards and procedures for data administration (data elements, names, definitions, values, formats, and database constructs). 44-200.05.(1)(a)

	Drafted	Draft	Sign by
Check one of the following:		Currently	Agency
Agency Data Administration Policy		Under Agency	Head
statement?		Review	(Implemented)

The Agency Data Administration Policy must be defined by March 1, 1996 and must be implemented by July 1, 1997. 44-200.05.(1)(b)

- Attach copy of current Data Administration Policy statement

Part 2 - Data Administrator and Responsibilities

Each agency shall designate and train an individual (the agency Data Administrator) to supervise or conduct the data administration activities of the agency utilizing the most appropriate information technology and methodologies. Written notification of Data Administrator appointments and changes shall be promptly sent to the Information Resource Commission (IRC). 44-200.050(2)(a).

Has an agency Data Administrator been designated?

- Yes No

If yes:

Name:	Mail Address:
Title:	Phone:
Supervisor's Name:	Fax:
Supervisor's Title:	Email:

The agency Data Administrator shall clearly and consistently define and assign data administration responsibilities to data owners and data custodians. 44-200.050(2)(c)	In Planning Process	Planning Documents Available	Plan Implementation	Start	Finish	Current %
Define the responsibilities of data owners and custodians	Yes/No?	Yes/No?				
Assign the responsibilities to owners and custodians						

The agency Data Administrator or a designated representative, shall participate in interagency data administration activities organized by the Information Resource Commission (IRC) in order to identify state-wide Data Administration issues and make recommendations to the IRC. 44-200.050(2)(e)

Check the inter-agency coordinating activities data administrator is willing to participate in:

- Standards relating to data as an asset to the State of Florida;
- Data that are critical to the mission of the State, or common to multiple agencies;
- Policies that ensure the establishment of a statewide enterprise view of information;

December 12, 1997

- Enhancements to the state Data Administration Program;
- Minimum requirements for agency Data Administration Programs; and
- Data administration education and awareness.

The agency Data Administrator or a designated representative shall, if applicable, participate in data administration activities organized by the Florida Fiscal Accounting Management Information System Coordinating Council, the Growth Management Data Network Coordinating Council, and other statutory bodies created for the purpose of coordinating and sharing data resources. 44-200.050(2)(d)

Check the inter-agency coordinating activities data administrator is willing to participate in:

- Florida Fiscal Accounting Management Information System (FFAMIS)
- Growth Management Data Network Coordinating Council
- Association of Administration Service Directors
- Criminal and Juvenile Justice Information System Council (CJJIS)
- Other _____
- Other _____

Part 3 - The Objectives of the Data Administration Policy

Objective 1

"Establish a framework of common metadata content, definition, and format standards for consistently documenting data resources in order to provide a consistent source of information about data." 44-200.020(1)	In Planning Process Yes/No?	Planning Documents Available? Yes/No?	Plan Implementation		
			Start	Finish	Current*

Develop a framework of metadata content standards

Develop a framework of data definition standards

Develop a framework of data format standards

Objective 2

"Improve the quality, accuracy, reliability, validity, precision, and integrity of data resources and the information derived from data resources." 44-200.020(2)	In Planning Process Yes/No?	Planning Documents Available? Yes/No?	Plan Implementation		
			Start	Finish	Current*

Establish data quality objectives and standards

Develop a methodology to ensure data quality

Assess quality of data stores

Develop a data quality assurance procedure for data collection

Establish a consistent means of deriving decision support information

Objective 3

"Promote data consistency and uniformity within and among the state agencies." 44-200.020(3)	In Planning Process Yes/No?	Planning Documents Available Yes/No?	Plan Implementation		
			Start	Finish	Current*

Develop naming design standards

Develop a means of linking legacy data to standard design

Develop a data dictionary

Develop an enterprise wide data model

Objective 4

"Manage and minimize duplication in collecting, processing, storing, and distributing data thereby reducing the cost of data acquisition and maintenance." 44-200.020(4)	In	Planning	Plan Implementation		
	Planning	Documents			
	Process	Available			
	Yes/No?	Yes/No?	Start	Finish	Current %

Conduct a legacy data survey to assess conversion needs

Incorporate consistency checks on new, re-engineered or legacy applications

Establish legacy data conversion plan

Eliminate or streamline data processes that are duplicative

Objective 5

"Encourage and facilitate data access and sharing within and among the State agencies, external user groups, and the public." 44-200.020(5)	In	Planning	Plan Implementation		
	Planning	Documents			
	Process	Available			
	Yes/No?	Yes/No?	Start	Finish	Current %

Research and identify data sharing opportunities within agency

Research and identify data sharing opportunities with other agencies

Incorporate data policies that are consistent with public access and security policies. 44-200.050(1)(f)

Develop boilerplate data sharing agreements

Educate and disseminate public access policies within agency and with public

Objective 6

"Promote information strategy planning and data modeling in order to develop an enterprise view of information from the perspective of its meaning and value to the individual agency and to the State of Florida." 44-200.060(6)	In	Planning	Plan Implementation		
	Planning	Documents			
	Process	Available			
	Yes/No?	Yes/No?	Start	Finish	Current %

Support both information strategy planning and the development and maintenance of application systems. 44-200.050(1)(d)

Integrate data administration program with the agency information system development methodology (ISDM). 44-200.050(1)(e)

Incorporate data administration review and approval into the agency information system development methodology to ensure consistency with the Agency Data Administration Policy and the enterprise view of data.
44-200.050(2)(b)

Report Prepared by: _____ **Date:** _____
Phone: _____
Agency Head Signature: _____ **Date:** _____

December 12, 1997

Appendix 3: Kansas Open Records Act

The Kansas Open Records Act, and all other Kansas statutes, can be accessed on-line through INK at <http://www.ink.org/public/statutes/statutes.html>.

Statute # 45-215
 Chapter 45.--PUBLIC RECORDS, DOCUMENTS AND INFORMATION
 Article 2.--RECORDS OPEN TO PUBLIC
 Title of act.

K.S.A. 45-215 through 45-223 shall be known and may be cited as the open records act.

Statute # 45-216
 Chapter 45.--PUBLIC RECORDS, DOCUMENTS AND INFORMATION
 Article 2.--RECORDS OPEN TO PUBLIC
 Public policy that records be open.

(a) It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy.

(b) Nothing in this act shall be construed to require the retention of a public record nor to authorize the discard of a public record.

Statute # 45-217
 Chapter 45.--PUBLIC RECORDS, DOCUMENTS AND INFORMATION
 Article 2.--RECORDS OPEN TO PUBLIC
 Definitions.

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

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

(2) "Public record" shall not include records which are owned by a private person or entity and are not related to functions, activities, programs or operations funded by public funds or records which are made, maintained or kept by an individual who is a member of the legislature or of the governing body of any political or taxing subdivision of the state.

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

December 12, 1997

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

Statute # 45-218

Chapter 45.--PUBLIC RECORDS, DOCUMENTS AND INFORMATION

Article 2.--RECORDS OPEN TO PUBLIC

Inspection of records; request; response; refusal, when; fees.

(a) All public records shall be open for inspection by any person, except as otherwise provided by this act, and suitable facilities shall be made available by each public agency for this purpose. No person shall removal original copies of public records from the office of any public agency without the written permission of the custodian of the record.

(b) Upon request in accordance with procedures adopted under K.S.A. 45-220, any person may inspect public records during the regular office hours of the public agency and during any additional hours established by the public agency pursuant to K.S.A. 45-220.

(c) If the person to whom the request is directed is not the custodian of the public record requested, such person shall so notify the requester and shall furnish the name and location of the custodian of the public record, if known to or readily ascertainable by such person.

(d) Each request for access to a public record shall be acted upon as soon as possible, but not later than the end of the third business day following the date that the request is received. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. If the request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester not later than the end of the third business day following the date that the request for the statement is received.

(e) The custodian may refuse to provide access to a public record, or to permit inspection, if a request places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency. However, refusal under this subsection must be sustained by preponderance of the evidence.

(f) A public agency may charge and require advance payment of a fee for providing access to or furnishing copies of public records, subject to K.S.A. 45-219.

Statute # 45-219

Chapter 45.--PUBLIC RECORDS, DOCUMENTS AND INFORMATION

Article 2.--RECORDS OPEN TO PUBLIC

Abstracts or copies of records; fees.

(a) Any person may make abstracts or obtain copies of any public record to which such person has access under this act. If copies are requested, the public agency may require a written request and advance payment of the prescribed fee. A public agency shall not be required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices, unless such items or devices were shown or played to a public meeting of the governing body thereof, but the public agency shall not be required to provide such items or devices which are copyrighted by a person other than the public agency.

(b) Copies of public records shall be made while the records are in the possession, custody and control of the custodian or a person designated by the custodian and shall be made under the supervision of such custodian or person. When practical, copies shall be made in the place where the records are kept. If it is impractical to do so, the custodian shall allow arrangements to be made for use of other facilities. If it is necessary to use other facilities for copying, the cost thereof shall be paid by the person desiring a copy of the records. In addition, the public agency may charge the same fee for the services rendered in supervising the copying as for furnishing copies under subsection (c) and may establish a reasonable schedule of times for making copies at other facilities.

(c) Except as provided by subsection (f) or where fees for inspection or for copies of a public record are prescribed by statute, each public agency may prescribe reasonable fees for providing access to or furnishing copies of public records, subject to the following:

(1) In the case of fees for copies of records, the fees shall not exceed the actual cost of furnishing copies, including the cost of staff time required to make the information available.

(2) In the case of fees for providing access to records maintained on computer facilities, the fees shall include only the cost of any computer services, including staff time required.

(3) Fees for access to or copies of public records of public agencies within the legislative branch of the state government shall be established in accordance with K.S.A. 46-1207a and amendments thereto.

(4) Fees for access to or copies of public records of public agencies within the judicial branch of the state government shall be established in accordance with rules of the supreme court.

(5) Fees for access to or copies of public records of a public agency within the executive branch of the state government shall be established by the agency head. Any person requesting records may appeal the reasonableness of the fees charged for providing access

to or furnishing copies of such records to the secretary of administration whose decision shall be final. A fee for copies of public records which is equal to or less than \$.25 per page shall be deemed a reasonable fee.

(d) Except as otherwise authorized pursuant to K.S.A. 75-4215 and amendments thereto, each public agency within the executive branch of the state government shall remit all moneys received by or for it from fees charged pursuant to this section to the state treasurer in accordance with K.S.A. 75-4215 and amendments thereto. Unless otherwise specifically provided by law, the state treasurer shall deposit the entire amount thereof in the state treasury and credit the same to the state general fund or an appropriate fee fund as determined by the agency head.

(e) Each public agency of a political or taxing subdivision shall remit all moneys received by or for it from fees charged pursuant to this act to the treasurer of such political or taxing subdivision at least monthly. Upon receipt of any such moneys, such treasurer shall deposit the entire amount thereof in the treasury of the political or taxing subdivision and credit the same to the general fund thereof, unless otherwise specifically provided by law.

(f) Any person who is a certified shorthand reporter may charge fees for transcripts of such person's notes of judicial or administrative proceedings in accordance with rates established pursuant to rules of the Kansas supreme court.

Statute # 45-220

Chapter 45.--PUBLIC RECORDS, DOCUMENTS AND INFORMATION

Article 2.--RECORDS OPEN TO PUBLIC

Procedures for obtaining access to or copies of records; request; office hours; provision of information on procedures.

(a) Each public agency shall adopt procedures to be followed in requesting access to and obtaining copies of public records, which procedures shall provide full access to public records, protect public records from damage and disorganization, prevent excessive disruption of the agency's essential functions, provide assistance and information upon request and insure efficient and timely action in response to applications for inspection of public records.

(b) A public agency may require a written request for inspection of public records but shall not otherwise require a request to be made in any particular form. Except as otherwise provided by subsection (c), a public agency shall not require that a request contain more information than the requester's name and address and the information necessary to ascertain the records to which the requester desires access and the requester's right of access to the records. A public agency may require proof of identity of any person requesting access to a public record. No request shall be returned, delayed or denied because of any technicality unless it is impossible to determine the records to which the requester desires access.

(c) If access to public records of an agency or the purpose for which the records may be used is limited pursuant to K.S.A. 21-3914 or 45-221, and amendments thereto, the agency may require a person requesting the records or information therein to provide written certification that:

(1) The requester has a right of access to the records and the basis of that right; or

(2) the requester does not intend to, and will not: (A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or

(B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed.

(d) A public agency shall establish, for business days when it does not maintain regular office hours, reasonable hours when persons may inspect and obtain copies of the agency's records. The public agency may require that any person desiring to inspect or obtain copies of the agency's records during such hours so notify the agency, but such notice shall not be required to be in writing and shall not be required to be given more than 24-hours prior to the hours established for inspection and obtaining copies.

(e) Each official custodian of public records shall designate such persons as necessary to carry out the duties of custodian under this act and shall ensure that a custodian is available during regular business hours of the public agency to carry out such duties.

(f) Each public agency shall provide, upon request of any person, the following information:

(1) The principal office of the agency, its regular office hours and any additional hours established by the agency pursuant to subsection (c).

(2) The title and address of the official custodian of the agency's records and of any other custodian who is ordinarily available to act on requests made at the location where the information is displayed.

(3) The fees, if any, charged for access to or copies of the agency's records.

(4) The procedures to be followed in requesting access to and obtaining copies of the agency's records, including procedures for giving notice of a desire to inspect or obtain copies of records during hours established by the agency pursuant to subsection (c).

Statute # 45-221

December 12, 1997

Chapter 45.--PUBLIC RECORDS, DOCUMENTS AND INFORMATION

Article 2.--RECORDS OPEN TO PUBLIC

Certain records not required to be open, separation of open and closed information required; statistics and records over 70 years old open.

- (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:
- (1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.
 - (2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.
 - (3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.
 - (4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.
 - (5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.
 - (6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual.
 - (7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.
 - (8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation.
 - (9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.
 - (10) Criminal investigation records, except that the district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:
 - (A) Is in the public interest;
 - (B) would not interfere with any prospective law enforcement action;
 - (C) would not reveal the identity of any confidential source or undercover agent;
 - (D) would not reveal confidential investigative techniques or procedures not known to the general public;
 - (E) would not endanger the life or physical safety of any person; and
 - (F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.
 - (11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.
 - (12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.
 - (13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.
 - (14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.
 - (15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.
 - (16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

- (A) The information which the agency maintains on computer facilities; and
- (B) the form in which the information can be made available using existing computer programs.
- (17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.
- (18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.
- (19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.
- (20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.
- (21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:
- (A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or
- (B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.
- (22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:
- (A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or
- (B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.
- (23) Library patron and circulation records which pertain to identifiable individuals.
- (24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.
- (25) Records which represent and constitute the work product of an attorney.
- (26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.
- (27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.
- (28) Sealed bids and related documents, until a bid is accepted or all bids rejected.
- (29) Correctional records pertaining to an identifiable inmate, except that:
- (A) The name, sentence data, parole eligibility date, disciplinary record, custody level and location of an inmate shall be subject to disclosure to any person other than another inmate;
- (B) the ombudsman of corrections, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;
- (C) the information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, shall be subject to disclosure to any person; and
- (D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.
- (30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.
- (31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those

records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) The bidder's list of contractors who have requested bid proposals for construction projects from any public agency, until a bid is accepted or all bids rejected.

(33) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(34) Financial information submitted by contractors in qualification statements to any public agency.

(35) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(36) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

(37) Information which would reveal the precise location of an archeological site.

(38) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

(39) Risk-based capital reports, risk-based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 1996 Supp. 40-2c20, and amendments thereto.

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

(41) Disclosure reports filed with the commissioner of insurance under subsection (a) of K.S.A. 1996 Supp. 40-2,156, and amendments thereto.

(42) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system.

(43) Any records the disclosure of which is restricted or prohibited by a tribal-state gaming compact.

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

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

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

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

Statute # 45-222

Chapter 45.--PUBLIC RECORDS, DOCUMENTS AND INFORMATION

Article 2.--RECORDS OPEN TO PUBLIC

Civil remedies to enforce act.

(a) The district court of any county in which public records are located shall have jurisdiction to enforce the purposes of this act with respect to such records, by injunction, mandamus or other appropriate order, in an action brought by any person, the attorney general or a county or district attorney.

December 12, 1997

(b) In any action hereunder, the court shall determine the matter de novo. The court on its own motion, or on motion of either party, may view the records in controversy in camera before reaching a decision.

(c) In any action hereunder, the court may award attorney fees to the plaintiff if the court finds that the agency's denial of access to the public record was not in good faith and without a reasonable basis in fact or law. The award shall be assessed against the public agency that the court determines to be responsible for the violation.

(d) In any action hereunder in which the defendant is the prevailing party, the court may award to the defendant attorney fees if the court finds that the plaintiff maintained the action not in good faith and without a reasonable basis in fact or law.

(e) Except as otherwise provided by law, proceedings arising under this section shall be assigned for hearing and trial at the earliest practicable date.

Statute # 45-223

Chapter 45.--PUBLIC RECORDS, DOCUMENTS AND INFORMATION

Article 2.--RECORDS OPEN TO PUBLIC

No liability for damages for violation of act.

No public agency nor any officer or employee of a public agency shall be liable for damages resulting from the failure to provide access to a public record in violation of this act.

December 12, 1997

Appendix 4: KIRC Policy #8000

This document can be found on-line at <http://www.state.ks.us/public/kirc/refpg2.htm#BM8000>.

POLICY # 8000 REVISION # 0

KANSAS INFORMATION RESOURCES COUNCIL

INFORMATION TECHNOLOGY POLICY # 8000 REVISION # 0

1.0 TITLE: Development of a Data Administration Program.

1.1 EFFECTIVE DATE:

1.2 TYPE OF ACTION: New

2.0 PURPOSE: To commit the state to the development of a formal Data Administration Program that recognizes and promotes the importance of data and information as valuable resources requiring management of their creation, use, storage, documentation, and disposition; encourages the management of data from both an agency-wide and state-wide view; improves data planning and access through the use of consistent methods, tools and technologies; identifies data that are critical to the mission of the state or that are common to multiple organizations within or among state agencies; and specifies the location of a central site for the development and maintenance of a statewide repository for metadata information, common data definitions, and ownership responsibilities in order to facilitate the exchange of information among agencies and the public.

3.0 ORGANIZATIONS AFFECTED: All division, departments and agencies of the state.

4.0 REFERENCES:

4.1 K.S.A 75-4741 authorizes the Kansas Information Resources Council to approve policies for the management of the state's information resources.

5.0 DEFINITIONS:

5.1 Data. Representation of facts, concepts, or instructions in a formalized manner suitable for communication, interpretation, or processing by humans or by automatic means. Any representations such as characters or analog quantities to which meaning is, or might be, assigned.

5.2 Data Administration. An ongoing, centralized, administrative function that coordinates the design, implementation, and maintenance of an effective data structure of the entities and relationships that comprise the integrated enterprise-wide database(s), and makes this information available to a community of information resource users. Responsibilities typically assigned to this function include information strategy planning, data and process modeling (both conceptual and logical), and the development of standards, policies, and procedures to define, collect, and organize data to meet managers' and users' existing and future information needs.

5.3 Data Custodian. Guardian or caretaker; the holder of data; the agent charged with the data owner's requirement for processing, communications, protection controls, access controls, and output distribution for the resource. The data custodian is normally a provider of services. The data custodian may be a central data center providing services to a number of agencies which are data owners.

5.4 Data Dictionary. A source of information about entities, data elements representing entities, relationships between entities, their origins, meanings, uses, and representation formats.

5.5 Data Model. A description of the organization of data in a manner that reflects the information structure of an enterprise.

5.6 Data Owner. The business function manager or agent assigned ownership responsibility for the data resource.

5.7 Data Repository. A database of metadata stored in a manner that permits ease of access and reporting.

5.7 Enterprise View. Information needs of an entire agency, rather than the needs of a single application or business unit. The enterprise view can be derived from the business model produced through information strategy planning.

5.8 Information. Data that have been organized or prepared in a form that is suitable for decision-making.

5.9 Metadata. Information that describes the definitions, structures, formats, allowable values, and use of the data resource. Data about data.

5.10 Statewide Enterprise View. Information needs of the entire State of Kansas, rather than the needs of a single agency or business unit.

December 12, 1997

6.0 POLICY:

6.1 It is the policy of the State of Kansas that each agency develop, implement, and maintain an Agency Data Administration Program.

6.2 Each agency shall produce an Agency Data Administration Policy statement that incorporates the recommendations of the Kansas Information Resources Council (KIRC), and goals, objectives, and methods oriented toward accomplishing the objectives of this rule. The Agency Data Administration Policy shall address the development and implementation of standards and procedures for data administration (data elements, names, definitions, values, formats, and database constructs).

6.3 The Agency Data Administration Program shall support both information systems strategy planning and the development and maintenance of application systems.

6.4 Agency Data Administration Program shall be integrated with the agency information system development methodology.

6.5 The Agency Data Administration Program shall incorporate data policies that are consistent with public access and security policies.

6.6 The Agency Data Administration Program shall incorporate data policies that support the maintenance of an Agency Data Repository for the storage of agency metadata. The agency repository should be consistent with the statewide repository so that metadata can be easily ported between them.

6.7 The Division of Information Systems and Communications (DISC) with the assistance of the Data Sharing Committee shall coordinate agencies metadata and operate a central site for the development and maintenance of a distributed statewide repository to provide access to metadata information, common data definitions, and ownership responsibilities.

7.0 PROCEDURES:

7.1 The Agency Data Administration Policy must be defined by March 1, 1997 and implemented by July 1 1998.

7.2 Each agency shall, at least annually, beginning September, 1997, provide a copy of its existing Agency Data Administration Policy, report on the status of Data Administration implementation, and assess the percentage of agency data currently being covered by the Agency Data Administration Program. In addition, the agency shall identify the plans and goals to be achieved by its Data Administration Program during the planning period.

8.0 RESPONSIBILITIES:

8.1 Each agency shall designate and train an individual (the agency Data Administrator) to supervise or conduct the Data Administration activities of the agency utilizing the most appropriate information technology and methodologies. Written notification of Data Administrator appointments and changes shall be promptly sent to the Chief Information Architect's Office.

8.2 Each agency shall assure that Data Administration review and approval is incorporated into the agency information system development methodology to ensure consistency with the Agency Data Administration Policy and the enterprise view of data.

8.3 The agency Data Administrator shall clearly and consistently define and assign data administration responsibilities to data owners and data custodians.

8.4 The agency Data Administrator or a designated representative, shall participate in interagency data administration activities organized by the central data repository staff within DISC with the assistance of the Data Sharing Committee, and approved by The Information Technology Board (ITAB) in order to identify state-wide Data Administration issues and make recommendations to the ITAB concerning, but not limited to:

1. Standards relating to data as an asset to the State of Kansas;
2. Data that are critical to the mission of the State, or common to multiple agencies;
3. Policies that ensure the establishment of a statewide enterprise view of information;
4. Enhancements to the state Data Administration Program;
5. Minimum requirements for Agency Data Administration Programs; and
6. Data administration education and awareness.

8.5 The Chief Information Architect is responsible for the maintenance of this policy.

9.0 CANCELLATION: None

10.0 CONTACT PERSON: Chief Information Architect 913-296-3011

December 12, 1997

December 12, 1997

1-40

Appendix 5: Major Technology Issues Document (November 15, 1994)

Attachment follows.

December 12, 1997

1-41

Appendix 6: Washington Privacy Statement

This document can be found on-line at <http://www.wa.gov/dis/commaccess/report.htm>.

Attachment follows.

December 12, 1997

1-42

attachment 4

KANSAS BOARD OF HEALING ARTS

BILL GRAVES
Governor



235 S. Topeka Blvd.
Topeka, KS 66603-3068
(785) 296-7413
FAX # (785) 296-0852
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MEMORANDUM

TO: The Special Committee on Government Organization

FROM: Lawrence T. Buening, Jr.
Executive Director

DATE: October 7, 1997

RE: **CONFIDENTIALITY OF PERSONAL INFORMATION
GATHERED AND MAINTAINED BY AGENCIES OF STATE
GOVERNMENT**

Thank you for the invitation to appear before you and provide information in behalf of the State Board of Healing Arts.

As several of you are not on committees before which the Board regularly appears, let me give you a brief description of the Board. The Board is comprised of 15 members, each appointed by the Governor for 4-year terms. Five members are M.D.'s, three are D.O.'s, three are D.C.'s, three are appointed from the general public and one is a podiatrist. The Board regulates the practice for 11 health care professions - medical doctors, doctors of osteopathy, chiropractors, podiatrists, physical therapists, physical therapist assistants, physicians' assistants, respiratory therapists, occupational therapists, occupational therapy assistants and athletic trainers. The Board has a staff of 27 full-time employees and a budget for FY 1998 of \$1,650,000. The Board is solely funded from the fees it collects for licensure and annual renewals. By statute, the Board contributes \$200,000 to the State general fund as reimbursement for services performed on the Board's behalf by other state agencies.

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR

MEMBERS OF THE BOARD

JOHN P. GRAVINO, D.O., PRESIDENT
LAWRENCE
RONALD J. ZCELLER, D.C., VICE-PRESIDENT
TOPEKA

DONALD B. BLETZ, M.D., OVERLAND PARK
C. J. CONRADY, JR., ANTHONY
JAMES D. EDWARDS, D.C., EMPORIA
HOWARD D. ELLIS, M.D., LEAWOOD
ROBERT L. FRAYSER, D.O., HOISINGTON
JANA D. JONES, M.D., LANSING
LANCE MALMSTROM, D.C., TOPEKA

LAUREL H. RICKARD, MEDICINE LODGE
CHRISTOPHER P. RODGERS, M.D., HUTCHINSON
HAROLD J. SAUDER, D.P.M., INDEPENDENCE
EMILY TAYLOR, LAWRENCE
HAI K. TRUONG, D.O., WICHITA
ROGER D. WARREN, M.D., HANOVER

①

I have been asked to respond to 5 questions.

- * **What personal information does your agency gather and maintain?**
- * **Under what authority (e.g., state law, federal law, regulation) is that information gathered and maintained?**
- * **Under what circumstances is personal information released to the public?**
- * **What authority governs release of personal information to the public and what policies has the agency developed to respond to request for personal information?**
- * **Review any recent proposed legislation that would affect your agency in this area.**

In responding to these questions, I have limited myself only to provisions regarding the Healing Arts Act and the 3 professions regulated by that act - M.D., D.O., and D.C.

Attached as Exhibit 1 is a listing of information gathered and maintained by the Board and under what authority that information is gathered and maintained. Hopefully, this adequately responds to questions #1 and #2.

In answer to question #3, three laws specify the general rules as to the openness of information gathered and generally govern the circumstances under which it would be released to the public. K.S.A. 65-2808 provides that the information gathered and maintained under that statute "shall be open to public inspection ..." K.S.A. 65-2838 provides that only proceedings to take a disciplinary action shall be taken in accordance with the Kansas Administrative Procedure Act (KAPA). KAPA provides at K.S.A. 77-523(f) that all proceedings under that law are open to public observation. Finally, the Board, like most state agencies, is subject to the Kansas Open Records Act (KORA) located at K.S.A. 45-215 et seq. KORA makes any recorded information made, maintained or kept by a public agency open for inspection unless otherwise provided by the Act. Exceptions which make information maintained by the Board confidential or privileged include:

<u>Exception</u>	<u>Authority</u>
Patient records, identities, criminal history and other investigative information obtained by subpoena	K.S.A. 65-2839a
Complaints or reports and information relating to a complaint (disclosure allowed in 4 instances).	K.S.A. 65-2898a
Peer Review Records.	K.S.A. 65-4915
Risk Management Records.	K.S.A. 65-4925
National Practitioner Data Bank Records	P.L. 99-660 45 CFR Part 60
Health manpower information collected at request of Secretary of Health and Environment.	K.S.A. 65-1,113
Exceptions contained in KORA	K.S.A. 45-221(a)(1), (2),(3),(4),(5),(11), (14),(25), and (36)

Circumstances under which personal information is released:

- (1) Telephone
- (2) Written request
- (3) Modem "on-line"
- (4) Information Network of Kansas (INK)
- (5) Subpoena by court

in further response to question #4, attached is the open
opened by the agency to respond to requests for personal

question #5, proposed legislation now pending which would
in this area is 1997 Senate Bill No. 330. This bill is almost
passed by Massachusetts in 1996. A copy of Senate Bill
that provision of the Massachusetts law and a sample of the
which were prepared as mandated by that law are attached.

requested my testimony include any related issues the Board
should consider. There are two issues I'd like to bring to
the first is a Federal District Court ruling issued in 1991 in a case
No. 88-1011. This case was settled before the Board was required to
produce a subpoena for the records the Board obtains during an
audit. I have enclosed the case for your consideration since the
issue is that a state statute making records "confidential" does not
make those records "privileged". (See pages 4-52 through 4-54.)

the I'd like to discuss is the collection and maintenance of
information unrelated to the Board's statutory stated mission. As shown
in 800 CMR 65-1,113, requires the Board as well as other Boards, to
collect and maintain information on the collection of health manpower information at the request of the
Department of Health and Environment. This statute also makes this information
subject to disclosure except for statistical purposes.

A questionnaire provided to all MD's and DO's with their 1998
audit. In the past, including this year, the Board has provided
information made to information requested by either KDHE or KU.
The information requested this year is substantially more than previous
years. The Board is being requested to make modifications to its computer
system to input this data. This request raises a number of questions
and answers which requires some policy decisions to be made by the

The responses to several of the questions will never change and
will be gathered at the time of original application for
information that may be inappropriate and not statutorily
required (e.g., race, sex, Hispanic origin) be required to be
complete? Information to be deemed complete?

(2) If the answer to question #1 is yes, what is the mechanism to keep this confidential information separate from statutorily public information?

(3) Should a licensing Board be mandated to collect and maintain personal information which it is not required to perform its statutory purpose?

(4) If yes to question #3, how does a licensing Board mandate applicants and licensees to provide information not statutorily required by the Board to collect and maintain?

(5) If answer to question #3 is yes, who should bear the costs of gathering and maintaining the information?

(6) Is it constitutionally permissible for a licensing Board to utilize a portion of the fees it collects for a purpose other than regulation of the profession?

Thank you for the opportunity to appear before you. While I may not have the answers, I would be happy to respond to any questions.

Exhibit 1

Information Collected

Authority

Written application, name, age, place of birth, current address, school, date of graduation, date of license, rating or grades received, length of time in practice in all other states.	K.S.A. 65-2808
Proof of completion of postgraduate training, evidence of not less than 60 college hours (DC's only), evidence of passing examination in basic science subjects, certificate of professional character, passing of examination in clinical practice.	K.S.A. 65-2873 K.A.R. 100-6-2
Photograph, certified copy of diploma, copies or certificate of other state licenses.	K.A.R. 100-8-1
Application for renewal, evidence of continuing education, evidence of professional liability insurance.	K.S.A. 65-2809
Complaints from practitioners.	K.S.A. 65-28,122
Complaints from consumers and others.	No Specific Statutory Authority.
Medical Malpractice Petitions.	K.S.A. 40-3409(a)

Closed Claim Reports.	K.S.A. 40-1126 K.S.A. 40-1127
Mandatory Insurance Reports.	K.S.A. 40-3421
Adverse Finding Reports.	K.S.A. 65-4923
Actions relating to practice privileges.	K.S.A. 65-28,121
Expert Witness Reports.	K.S.A. 40-3409(c)
Reports under the National Practitioner Data Bank.	P.L. 99-660 P.L. 100-177
Health Manpower Information.	K.S.A. 65-1,113
Social Security Numbers.	K.S.A. 74-139

KANSAS STATE BOARD OF HEALING ARTS
OPEN RECORDS POLICY

It is the official policy of the Kansas State Board of Healing Arts (hereafter "Board") that public records maintained by the Board are to be accessible to the public, and that the Kansas Open Records Act shall be vigorously enforced in a timely and efficient manner with due regard for preserving the records maintained by the Board. In furtherance of this policy, the Board hereby adopts the following procedure for responding to requests for access to open records.

A. Records Custodian

1. The Executive Director of the Board is hereby designated as official records custodian.
2. The Executive Director may designate a person to act as official custodian in the absence of the Executive Director.
3. All inspections and copying of records maintained by the Board shall be performed under the supervision of the Executive Director. The Executive Director may designate other persons to provide access to or information from public records maintained by the Board.
4. At least one person designated to act on behalf of the records custodian shall be available during regular business hours to carry out the duty of providing access to records.
5. Records may be inspected in person at the Board office in Topeka, Kansas during official office hours.
6. Copies of records may be obtained as provided by this policy.

B. Official Office Hours (except for official state holidays).

Monday	8:00 - 4:30 PM
Tuesday	8:00 - 4:30 PM
Wednesday	8:00 - 4:30 PM
Thursday	8:00 - 4:30 PM

C. Form of Request

All requests to inspect or copy a record shall be made in writing to the records custodian. Any written request addressed to the official custodian, or to the Board or employee of the Board, which sufficiently identifies the record sought, and the name and address of the party requesting access to the record, shall be deemed an adequate request to inspect or copy an open public record. For purpose of this policy, a request received at the Board office by fax is deemed a written request.

D. Charges for Access to Records

1. Purpose of Charges. There is hereby established inspection and copying charges. The charges compensate the Board for the actual cost of staff time, furnishing copies, and postage. A schedule of charges shall be posted in the Board office. The costs may be waived by the custodian when deemed appropriate.

2. Calculation of Costs.

a. The cost of staff time shall be calculated as the market rate (step 5) within the pay range assigned to the job classification of the employee providing access to the record. The current hourly pay rate for relevant job classifications shall be posted with other information required to be posted by this policy. The relevant job classifications with their assigned pay ranges are as follows:

OA II:	Range 11
OA III:	Range 13
Secretary I:	Range 15
Legal Assistant:	Range 18
Applications Programmer II:	Range 25

The amount of time accrued shall be calculated to the nearest quarter hour.

b. The cost of copies made by the Board shall be calculated at .25 per page. If it is necessary to use other facilities for copying, the actual cost shall be paid

by the person requesting the copy.

c. No additional cost for providing documents by fax will be charged.

(1.) The decision to provide records by fax shall be in the discretion of the records custodian or designee.

(2.) Records in excess of 10 pages will not ordinarily be transmitted by fax.

d. Actual costs of postage shall be calculated.

3. Computer Records. The fee for providing access to records maintained on computer facilities include staff time plus any computer time for which the Board is responsible. The estimated rate of cost for computer time shall be made known to the requestor prior to beginning the computer research.

4. Payment of Fees.

(1.) Payment for costs of inspecting or copying a public record will not be demanded when the total calculated cost is less than \$10.00 unless approved by the Executive Director.

(2.) Advance payment in part or full may be demanded when the estimated cost exceeds \$100.00.

5. Disposition of Fees Collected. All fees collected shall be deposited in accordance with K.S.A. 65-2855 and K.S.A. 75-4215.

E. Software Programs

Software programs for electronic data processing and documentation thereof are not subject to inspection or copying unless required by an order of a court of competent jurisdiction. However, a register is to be maintained by the Board which (1) describes the type of public information which the Board maintains on computer facilities, and (2) describes the form in which information can be made available using existing computer programs.

F. Lists of Names

The use of names derived from a public record is limited by K.S.A. 21-3914 and amendments thereto. If access to a record maintained by the Board reveals the identity of one or more persons, than the requestor shall be required to submit a written certificate that:

- (1) The requestor has a right of access to the records and the basis of that right; or
- (2) The requestor does not intend to, and will not:
 - (A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or
 - (B) Sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed.

If the requestor is not known to the custodian, proof of identity may be required prior to releasing any name derived from a record. If proof of identity is required, a copy of such proof shall be attached to the request.

G. Removal of Records

Removal of original records from the office shall not be permitted without the written permission of the records custodian which states the location to which the record will be moved and the date of return.

H. Denial of Access to Records

1. When Access Will be Denied.

- (A) The records custodian may refuse to provide access to a record if the request

places an unreasonable burden on the agency, if the records custodian has reason to believe that repeated requests are intended to disrupt functions of the Board and its operations, or if a provision of law prohibits or restricts disclosure of a record. A refusal based upon an unreasonably burdensome request shall not be made without first attempting to contact the requestor to narrow the scope of the request.

(B) The records custodian may refuse to provide access to a record for any discretionary reason listed in K.S.A. 45-221(a) and amendments thereto. The Board, upon request, may authorize access to such record.

2. Notice to Requestor.

Upon denial of a request for access to records, the records custodian or a designee shall provide a detailed written statement to the requestor notifying such person of the grounds for denial, and where appropriate, identifying the provision of law which prohibits or restricts disclosure.

I. Notice of Policy to be Posted

A copy of this policy shall be conspicuously posted in the Board office, and a copy or a summary of this policy shall be made available to any party upon request at no cost. In addition, a notice to requestors shall be made available upon request at no cost which states the names of the official and designated records custodians, the office hours of the Board office, a statement that a policy is posted and is available, a statement that costs will be assessed to reimburse the Board, a description of how costs are calculated, and a statement explaining grounds for denying access to records.

J. Statutory Restrictions on Dissemination of Information

1. Applications.

The application for licensure (by examination, by endorsement, or reinstatement)

or registration and all associated or accompanying documents, and the renewal application shall be considered public records by the Kansas State Board of Healing Arts. Any portion of the application or renewal application (such as social security number, academic performance records, and disciplinary history) shall be deleted from copies of the original record if it discloses information which is confidential or privileged pursuant to federal or state law, or if it discloses the presence or absence of disabilities.

2. Disciplinary Information.

- (a) The agency record of any proceeding is a public record. The agency record consists of pleadings, transcripts, exhibits and any other document considered by the Board and used as a basis for its agency action. Documents in the agency record which are confidential or privileged or which are subject to a valid protective order issued by a presiding officer will not be available available for inspection or copying, except that such documents will be disclosed if the confidential or privileged information can be deleted.
- (b) Attorney work product, complaints and other investigation records are not public records under Kansas Statutes.
- (c) Review Committee records maintained by the Board are privileged and will not be disclosed or made available for inspection or copying.

3. Computer Public Profile Inquiry

The public profile inquiry information maintained in the Board's AS400 computer system is a public record. Only the public information which appears on the public profiled inquiry screen may be released under the Open Records Act. This information includes license status, license number, licensee's name, mailing address, licensee's profession, licensee's specialty

(if any), licensee's date of birth, licensee's insurance carrier and policy number, licensee's professional school, licensee's authorization to practice under either endorsement or examination, temporary permit, temporary permit issued, temporary permit expires, United States or foreign medical school graduate, continuing medical education year, license expiration dated, renewal extension date, original license date, last renewal date, degree date, last cancellation date, last reinstatement date, and the existence of a disciplinary file.

4. Rosters

The **Kansas Board of Healing Arts Rosters** are public records and may be disseminated to any individual at a cost of \$7 per paper copy or \$5 for a floppy disk. The requestor is required to submit the written certification provided by section F of this policy.

5. Other Records

Records which are not required to be disclosed, as provided by K.S.A. 45-221(a) and amendments thereto, will not be disclosed unless authorized by the Executive Director or designated records custodian.

K. This policy supersedes all prior open records policies and customs whether or not adopted in written form.

KANSAS STATE BOARD OF
HEALING ARTS

Lawrence T. Buening, Jr.
Executive Director

Date: _____

SENATE BILL No. 330

By Senators Huelskamp and Salmans

2-14

9 AN ACT concerning the board of healing arts; establishing and creating
10 health care provider profiles; establishing duties and requirements re-
11 garding the reporting, collecting, compiling and dissemination of nec-
12 essary information; amending K.S.A. 65-2898a and repealing the ex-
13 isting section.
14

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

16 **New Section 1.** The state board of healing arts is hereby directed to
17 collect the following information to create individual profiles on health
18 care licensees in a format created by the board that shall be available for
19 dissemination to the public:

20 (a) A description of any criminal convictions for felonies and serious
21 misdemeanors as determined by the board, within the most recent 10
22 years. For the purposes of this subsection, a person shall be deemed to
23 be convicted of a crime if the person plead guilty or was found or ad-
24 judged guilty by a court of competent jurisdiction;

25 (b) a description of any charges to which a licensee plead nolo con-
26 tendere or where sufficient facts of guilt were found and the matter was
27 continued without a finding by a court of competent jurisdiction;

28 (c) a description of any final board disciplinary actions within the most
29 recent 10 years;

30 (d) a description of any final disciplinary actions by licensing boards
31 in other states within the most recent 10 years;

32 (e) a description of revocation or involuntary restriction of hospital
33 privileges for reasons related to competence or character that have been
34 taken by the hospital's governing body or any other official of the hospital
35 after procedural due process has been afforded, or the resignation from
36 or nonrenewal of medical staff membership or the restriction of privileges
37 at a hospital taken in lieu of or in settlement of a pending disciplinary
38 case related to competence or character in that hospital. Only cases which
39 have occurred within the most recent 10 years shall be disclosed by the
40 board to the public;

41 (f) all medical malpractice court judgments and all medical malpr-
42 tice arbitration awards in which a payment is awarded to a complaining
43 party during the most recent 10 years and all settlements of medical

65-1

1 malpractice claims in which a payment is made to a complaining party
 2 within the most recent 10 years. Dispositions of paid claims shall be re-
 3 ported in a minimum of three graduated categories indicating the level
 4 of significance of the award or settlement. Information concerning paid
 5 medical malpractice claims shall be put in context by comparing an in-
 6 dividual licensee's medical malpractice judgment awards and settlements
 7 to the experience of other health care licensees within the same specialty.
 8 Information concerning all settlements shall be accompanied by the fol-
 9 lowing statement: "Settlement of a claim may occur for a variety of rea-
 10 sons which do not necessarily reflect negatively on the professional com-
 11 petence or conduct of the health care provider. A payment in settlement
 12 of a medical malpractice action or claim should not be construed as creat-
 13 ing a presumption that medical malpractice has occurred." Nothing
 14 herein shall be construed to limit or prevent the board from providing
 15 further explanatory information regarding the significance of categories
 16 in which settlements are reported. Pending malpractice claims shall not
 17 be disclosed by the board to the public, and nothing in this section shall
 18 be construed to prevent the board from investigating and disciplining a
 19 licensee on the basis of medical malpractice claims that are pending;

- 20 (g) names of medical schools and dates of graduation;
- 21 (h) graduate medical education;
- 22 (i) specialty board certification;
- 23 (j) number of years in practice;
- 24 (k) names of the hospitals where the licensee has privileges;
- 25 (l) appointments to medical school faculties and indication as to
 26 whether a licensee has a responsibility for graduate medical education
 27 within the most recent 10 years;
- 28 (m) information regarding publications in peer-reviewed medical lit-
 29 erature within the most recent 10 years;
- 30 (n) information regarding professional or community service activi-
 31 ties and awards;
- 32 (o) the location of the licensee's primary practice setting;
- 33 (p) the identification of any translating services that may be available
 34 at the licensee's primary practice location; and
- 35 (q) an indication of whether the licensee participates in the medicaid
 36 program.

37 The board shall provide individual licensees with a copy of their profiles
 38 prior to release to the public. A licensee shall be provided a reasonable
 39 time to correct factual inaccuracies that appear in such profile.

40 A physician may elect to have his profile omit certain information pro-
 41 vided pursuant to subsections (l) to (n), inclusive, concerning academic
 42 appointments and teaching responsibilities, publication in peer-review
 43 journals and professional and community service awards. In collecting

1 information for such profiles and in disseminating the same, the board
 2 shall inform physicians that they may choose not to provide such infor-
 3 mation required pursuant to subsections (l) to (n), inclusive.

4 New Sec. 2. The clerk of any court in which a health care provider
 5 licensed in this state is convicted of any crime or in which an unregistered
 6 practioner is convicted of holding such unregistered practioner out as a
 7 practioner of medicine or of practicing medicine, within one week there-
 8 after shall report the same to the board together with a copy of the court
 9 proceedings in the case. For the purposes of this section, a person shall
 10 be deemed to be convicted of a crime if such person plead guilty or was
 11 found or adjudged guilty by a court of competent jurisdiction.

12 Where a health care licensee pleads nolo contendere to charges or
 13 where sufficient facts of guilt were found and the matter was continued
 14 without a finding by a court of competent jurisdiction, such clerk shall,
 15 within one week thereafter, report the same to the board of healing arts
 16 together with a copy of the court proceedings in the case.

17 New Sec. 3. When collecting information or compiling reports in-
 18 tended to compare individual health care providers, the board of healing
 19 arts shall require that:

20 (a) Provider organizations which are representative of the target
 21 group for profiling shall be meaningfully involved in the development of
 22 all aspects of the profile methodology including collection methods, for-
 23 mation and methods and means for release and dissemination;

24 (b) the entire methodology for collecting and analyzing the data shall
 25 be disclosed to all relevant provider organizations and to all providers
 26 under review;

27 (c) data collection and analytical methodologies shall be used that
 28 meet accepted standards of validity and reliability;

29 (d) the limitations of the data sources and analytic methodologies
 30 used to develop provider profiles shall be clearly identified and acknowl-
 31 edged, including, but not limited to, the appropriate and inappropriate
 32 uses of the data;

33 (e) to the greatest extent possible, provider profiling initiatives shall
 34 use standard-based norms derived from widely accepted, provider-de-
 35 veloped practice guidelines;

36 (f) provider profiles and other information that have been compiled
 37 regarding provider performance shall be shared with providers under
 38 review prior to dissemination, provided that opportunity for corrections
 39 and additions of helpful explanatory comments shall be provided to
 40 publication; and provided that such profiles shall only include data
 41 reflect care under the control of the provider for whom such profile is
 42 prepared;

43 (g) comparisons among provider profiles shall adjust for patient case-

09-1

1 mix and other relevant risk factors and control for provider peer groups,
2 when appropriate;

3 (h) effective safeguards to protect against the unauthorized use or
4 disclosure or provider profiles shall be developed and implemented;

5 (i) effective safeguards to protect against the dissemination of incon-
6 sistent, incomplete, invalid, inaccurate or subjective profile data shall be
7 developed and implemented;

8 (j) the quality and accuracy of provider profiles, data sources and
9 methodologies shall be evaluated regularly;

10 (k) providers shall be reimbursed for the reasonable costs that are
11 required for assembling, formatting and transmitting data and informa-
12 tion to organizations that develop or disseminate provider profiles; and

13 (l) the benefits of provider profiling shall outweigh the costs of de-
14 veloping and disseminating the profiles.

15 New Sec. 4. The board of healing arts in implementing the provi-
16 sions of section 1 shall not disseminate a health care licensee's profile by
17 electronic media, any form of telecommunications, or CD-Rom, before
18 July 1, 1998. The board shall conduct a study of the impact of publication
19 of health care licensee profiles by electronic media on the personal safety
20 of health care licensees and their families, and shall report its findings to
21 the legislature on or before January 1, 1998. The board shall include in
22 the report a sample profile designed with safeguards recommended by
23 the board. No later than December 1, 1997, and after a public hearing,
24 the board shall promulgate rules and regulations to eliminate, to the ex-
25 tent practicable, the possibility that certain information contained in the
26 profiles may jeopardize the personal safety of health care licensees and
27 their families.

28 Sec. 5. K.S.A. 65-2898a is hereby amended to read as follows: 65-
29 2898a. (a) Any complaint or report, record or other information relating
30 to a complaint which is received, obtained or maintained by the board
31 shall be confidential and shall not be disclosed by the board or its em-
32 ployees in a manner which identifies or enables identification of the per-
33 son who is the subject or source of the information except the information
34 may be disclosed:

35 (1) In any proceeding conducted by the board under the law or in an
36 appeal of an order of the board entered in a proceeding, or to any party
37 to a proceeding or appeal or the party's attorney;

38 (2) to a hospital committee which is authorized to grant, limit or deny
39 hospital privileges, if any disciplinary action authorized by K.S.A. 65-2836
40 and amendments thereto has at any time been taken against the licensee
41 or if the board has at any time denied a license to the person;

42 (3) to the person who is the subject of the information or to any
43 person or entity when requested by the person who is the subject of the

1 information, but the board may require disclosure in such a manner that
2 will prevent identification of any other person who is the subject or source
3 of the information; or

4 (4) to a state or federal licensing, regulatory or enforcement agency
5 with jurisdiction over the subject of the information or to an agency with
6 jurisdiction over acts or conduct similar to acts or conduct which would
7 constitute grounds for action under this act. Any confidential complaint
8 or report, record or other information disclosed by the board as author-
9 ized by this section shall not be redisclosed by the receiving agency except
10 as otherwise authorized by law.

11 (b) Information that is confidential under subsection (a) shall not pre-
12 vent the reporting of a description of any final board disciplinary action
13 for the purpose of compiling a health care provider profile under section
14 1 of this act and amendments thereto.

15 (b)(c) This section shall be part of and supplemental to the Kansas
16 healing arts act.

17 Sec. 6. K.S.A. 65-2898a is hereby repealed.

18 Sec. 7. This act shall take effect and be in force from and after its
19 publication in the statute book.

19-1

sources and methodologies shall be evaluated regularly;

(k) providers shall be reimbursed for the reasonable costs that are required for assembling, formatting and transmitting data and information to organizations that develop or disseminate provider profiles; and

(l) the benefits of provider profiling shall outweigh the costs of developing and disseminating the profiles.

SECTION 2. Section 53B of chapter 111 of the General Laws, as so appearing, is hereby amended by striking out, in line 13, the word "All" and inserting in place thereof the following words:- Except as provided in section five of chapter one hundred and twelve, all.

SECTION 3. Said section 53B of said chapter 111, as so appearing, is hereby further amended by striking out, in line 32, the word "one" and inserting in place thereof the following word:- ten.

SECTION 4. Section 5 of said chapter 112 of the General Laws, as so appearing, is hereby amended by inserting after the second paragraph the following paragraph:-

The board is hereby authorized and directed to develop and implement, without cost to the commonwealth, a plan for a remediation program designed to improve physicians' clinical and communication skills. The board shall promulgate rules and regulations for such remediation programs which shall include, but not be limited to, the following provisions:

(a) the board shall offer a remediation program to physicians, on a voluntary basis, as an alternative to disciplinary action in appropriate cases as determined by the board;

(b) the board shall select providers of remediation and assessment services for physicians;

(c) the board shall make referrals of physicians to remediation and assessment providers, shall have the authority to approve individual remediation programs recommended by such providers and shall monitor the progress of each physician undertaking a remediation program;

(d) the board shall have the authority to determine successful completion of physician remediation programs and may make any further orders for probationary monitoring, disciplinary proceedings or other action as it deems appropriate;

(e) the board shall negotiate with insurance carriers, hospitals, health care providers, physicians and other affected parties to establish mechanisms for the funding of the remediation programs set forth in this paragraph; provided, however, that said board shall establish terms and conditions under which the primary financial obligation for an individual remediation program shall be borne by the affected physician.

SECTION 5. Said section 5 of said chapter 112, as so appearing, is hereby further amended by inserting after the fourth paragraph the following two paragraphs:-

The board shall collect the following information to create individual profiles on licensees, in a format created by the board that shall be available for dissemination to the public:-

(a) a description of any criminal convictions for felonies and serious misdemeanors as determined by the board, within the most recent ten years. For the purposes of this subsection, a person shall be deemed to be convicted of a crime if he pleaded guilty or if he was found or adjudged guilty by a court of competent jurisdiction;

(b) a description of any charges to which a physician pleads nolo contendere or where sufficient facts of guilt were found and the matter was continued without a finding by a court of competent

jurisdiction;

(c) a description of any final board disciplinary actions within the most recent ten years;

(d) a description of any final disciplinary actions by licensing boards in other states within the most recent ten years;

(e) a description of revocation or involuntary restriction of hospital privileges for reasons related to competence or character that have been taken by the hospital's governing body or any other official of the hospital after procedural due process has been afforded, or the resignation from or nonrenewal of medical staff membership or the restriction of privileges at a hospital taken in lieu of or in settlement of a pending disciplinary case related to competence or character in that hospital. Only cases which have occurred within the most recent ten years shall be disclosed by the board to the public;

(f) all medical malpractice court judgments and all medical malpractice arbitration awards in which a payment is awarded to a complaining party during the most recent ten years and all settlements of medical malpractice claims in which a payment is made to a complaining party within the most recent ten years. Dispositions of paid claims shall be reported in a minimum of three graduated categories indicating the level of significance of the award or settlement. Information concerning paid medical malpractice claims shall be put in context by comparing an individual licensee's medical malpractice judgment awards and settlements to the experience of other physicians within the same specialty. Information concerning all settlements shall be accompanied by the following statement:

"Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the physician. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred. Nothing herein shall be construed to limit or prevent the board from providing further explanatory information regarding the significance of categories in which settlements are reported.

Pending malpractice claims shall not be disclosed by the board to the public. Nothing herein shall be construed to prevent the board from investigating and disciplining a licensee on the basis of medical malpractice claims that are pending.

(g) names of medical schools and dates of graduation;

(h) graduate medical education;

(i) specialty board certification;

(j) number of years in practice;

(k) names of the hospitals where the licensee has privileges;

(l) appointments to medical school faculties and indication as to whether a licensee has a responsibility for graduate medical education within the most recent ten years;

(m) information regarding publications in peer-reviewed medical literature within the most recent ten years;

(n) information regarding professional or community service activities and awards;

(o) the location of the licensee's primary practice setting;

(p) the identification of any translating services that may be available at the licensee's primary practice location;

(q) an indication of whether the licensee participates in the medicaid program.

The board shall provide individual licensees with a copy of their profiles prior to release to the public. A licensee shall be provided a reasonable time to correct factual inaccuracies that appear in such

profile.

A physician may elect to have his profile omit certain information provided pursuant to clauses (l) to (n), inclusive, concerning academic appointments and teaching responsibilities, publication in peer-reviewed journals and professional and community service awards. In collecting information for such profiles and in disseminating the same, the board shall inform physicians that they may choose not to provide such information required pursuant to said clause (l) to (n), inclusive.

SECTION 6. Chapter 221 of the General Laws is hereby amended by striking out section 26 and inserting in place thereof the following section:-

Section 26. The clerk of any court in which a physician registered in the commonwealth is convicted of any crime or in which an unregistered practitioner is convicted of holding himself out as a practitioner of medicine or of practicing medicine shall, within one week thereafter, report the same to the board of registration in medicine together with a copy of the court proceedings in the case. For the purposes of this section, a person shall be deemed to be convicted of a crime if he pleaded guilty or was found or adjudged guilty by a court of competent jurisdiction.

In the instance where a physician pleads nolo contendere to charges or where sufficient facts of guilt were found and the matter was continued without a finding by a court of competent jurisdiction, such clerk shall, within one week thereafter, report the same to the board of registration in medicine together with a copy of the court proceedings in the case.

SECTION 7. The division of health care finance and policy shall conduct a study of reports which provide comparative performance and other information concerning health plans, hospitals, physicians and other providers and shall provide any recommendations it may have for legislation to facilitate the production of such reports and the reasons therefor to the joint committee on health care of the general court on or before March first, nineteen hundred and ninety-seven.

In evaluating such reports and the methodologies used in producing such reports and in developing its recommendations, said division shall consider the following issues:-

(a) the appropriate role of the commonwealth in developing such reports, and whether purchasers and providers can reasonably be anticipated to continue to develop such reports in response to market forces;

(b) the necessity or advisability of state mandates concerning the collection and evaluation of information for such reports;

(c) the means and methods for defining and protecting the reliability and validity of data and information including, but not limited to, variations in the relative severity presented by individual patients;

(d) the extent to which existing data sources and indicators are valid;

(e) the costs of establishing and maintaining systems producing such reports and possible sources of revenue to defray the same.

SECTION 8. On or before December fifteenth, nineteen hundred and ninety-six, the board of registration in medicine shall file a report with the house and senate committees on ways and means concerning the establishment of a funding mechanism for the remediation programs set forth in section four of this act.

SECTION 9. The board of registration in medicine, in implementing

the provisions of section five, shall not disseminate a physician profile by electronic media, including the World Wide Web of the Internet, so-called, or on CD-Rom, so-called before May first, nineteen hundred and ninety-seven. The board shall conduct a study of the impact of publication of physician profiles by electronic media on the personal safety of physicians and their families, and shall report its findings to the joint committee on health care on or before January first, nineteen hundred and ninety-seven. The board shall include in such report a sample profile designed with safeguards recommended by the board pursuant to the aforementioned study. Not later than March first, nineteen hundred and ninety-seven and after public hearing, the board shall promulgate regulations to eliminate, to the extent practicable, the possibility that certain information contained in such profiles may jeopardize that personal safety of physicians and their families.

House of Representatives, July 31, 1996.
Passed to be enacted, (Thomas M. Finneran), Speaker.

In Senate, July 31, 1996.
Passed to be enacted, (Thomas F. Birmingham), President.

9 August, 1996.
Approved, 12:05 P.M.
(William F. Weld), Governor.

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EXCELLENT Q. PHYSICIAN, MD

VI. Malpractice Information

Some studies have shown that there is no significant correlation between malpractice history and a doctor's competence. At the same time, the Board believes that consumers should have access to malpractice information. In these profiles, the Board has given you information about both the malpractice history of the physician's specialty and the physician's history of payments. The Board has placed payment amounts into three statistical categories: below average, average, and above average. To make the best health care decisions, you should view this information in perspective. You could miss an opportunity for high quality care by selecting a doctor based solely on malpractice history.

When considering malpractice data, please keep in mind:

- * Malpractice histories tend to vary by specialty. Some specialties are more likely than others to be the subject of litigation. This report compares doctors only to the members of their specialty, not to all doctors, in order to make individual doctor's history more meaningful.
- * This report reflects data for the last 10 years of a doctor's practice. For doctors practicing less than 10 years, the data covers their total years of practice. You should take into account how long the doctor has been in practice when considering malpractice averages.
- * The incident causing the malpractice claim may have happened years before a payment is finally made. Sometimes, it takes a long time for a malpractice lawsuit to move through the legal system.
- * Some doctors work primarily with high risk patients. These doctors may have malpractice histories that are higher than average because they specialize in cases or patients who are at very high risk for problems.
- * Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the physician. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.

You may wish to discuss information provided in this report, and malpractice generally, with your doctor. The Board can refer you to other articles on this subject.

Dr. PHYSICIAN has not made a payment on a malpractice claim in Massachusetts in the last ten years.

VII. Disciplinary ActionsA. Criminal Convictions

The information in this section may not be comprehensive. The courts are now required by law to supply this information to the Board.

Dr. PHYSICIAN has had no criminal convictions in the past ten years.

B. Hospital Discipline

This section contains several categories of disciplinary actions taken by Massachusetts hospitals during the past ten years which are specifically required by law to be released in the physician's profile.

Dr. PHYSICIAN has no record of hospital discipline in the past ten years.

Massachusetts Board of Registration in Medicine
Physician Profile

REALLYBAD PHYSICIAN, MD

I. Physician Information

The information in sections I - V has been provided by the physician.

Dr. Physician has been in practice in Massachusetts: 22 years

Accepting new patients? Yes Accepts Medicaid? Yes

Primary work setting: Partnership

Business address: 222 West Pleasant Street
Unit 222
Anywhere, MA 88888-
Phone: 555-555-9999

Translation services available: Farsi Japanese

Insurance Plans Accepted

BLUE CROSS INDEMNITY
FALLON
STATE HANCOCK

Hospital Affiliations

PLEASING VIEW HOSPITAL
GREEN VALLEY MEDICAL CENTER

II. Education & Training

Medical School: Pleasantview Medical College
Graduation Date: 1973

Post Graduate Training: None Reported

III. Specialty

FAMILY PRACTICE
Board Certified: Not Board Certified

IV. Honors and Awards

STAR, HOLLYWOOD WALK OF FAME - 1976

V. Professional Publications

This physician has reported no publications.

VI. Malpractice Information

Some studies have shown that there is no significant correlation between malpractice history and a doctor's competence. At the same time, the Board believes that consumers should have access to malpractice information. In these profiles, the Board has given you information about both the malpractice history of the physician's specialty and the physician's history of payments. The Board has placed payment amounts into three statistical categories: below average, average, and above average. To make the best health care decisions, you should view this information in perspective. You could miss an opportunity for high quality care by selecting a doctor based solely on malpractice history.

When considering malpractice data, please keep in mind:

- * Malpractice histories tend to vary by specialty. Some specialties are more likely than others to be the subject of litigation. This report compares doctors only to the members of their specialty, not to all doctors, in order to make individual doctor's history more meaningful.

REALLYBAD PHYSICIAN, MD

- * This report reflects data for the last 10 years of a doctor's practice. For doctors practicing less than 10 years, the data covers their total years of practice. You should take into account how long the doctor has been in practice when considering malpractice averages.
- * The incident causing the malpractice claim may have happened years before a payment is finally made. Sometimes, it takes a long time for a malpractice lawsuit to move through the legal system.
- * Some doctors work primarily with high risk patients. These doctors may have malpractice histories that are higher than average because they specialize in cases or patients who are at very high risk for problems.
- * Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the physician. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.

You may wish to discuss information provided in this report, and malpractice generally, with your doctor. The Board can refer you to other articles on this subject.

Dr. Physician's specialty is FAMILY PRACTICE.

Dr. Physician has been in practice in Massachusetts:

Physicians licensed in this specialty:	22 years
Number who made malpractice payments in the last ten years:	1025
	97 (9.46 percent)

Number of payments for Dr. Physician:

4

Payment details for Dr. Physician

Date	Category of Payment
07/15/89	Average
10/25/91	Above Average
03/03/94	Below Average
06/01/95	Above Average

VII. Disciplinary Actions

A. Criminal Convictions

The information in this section may not be comprehensive. The courts are now required by law to supply this information to the Board.

Date: 05/04/94	Docket: XR94-33333	Venue: US District Ct
	Action: Conviction by Jury Verdict	
	Offense: 2 counts of larceny exceeding \$10,000	
	Sentence: Restitution, 2 years probation, fine \$50,000	

B. Hospital Discipline

This section contains several categories of disciplinary actions taken by Massachusetts hospitals during the past ten years which are specifically required by law to be released in the physician's profile.

1. Pleasant Valley Hospital
Basis: Credentialing-submitted False Information
Action: Restriction Of Right
Dates: 01/01/88 01/01/89
2. PLEASANT VALLEY HOSPITAL
Basis: Academic Research Fraud
Action: Suspension Of Right
Dates: 01/01/89 01/01/90
3. PLEASANT VALLEY HOSPITAL
Basis: Failure To Follow By-laws, Rules, Etc.
Action: Non-renewal Of Right
Dates: 01/01/90 01/01/91

Massachusetts Board of Registration in Medicine
Physician Profile

REALLYBAD PHYSICIAN, MD

C. Board Discipline

This section includes final disciplinary actions taken by the Massachusetts Board of Registration in Medicine during the past ten years.

01/01/96 Case #: 96-XX-XX
Reprimand

Instrument: Assurance Of Discontinuance

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

HARVEY BRYANT,

Plaintiff,

v.

WILBUR HILST, M.D.,

Defendant.

Case No. 90-4101-S

MEMORANDUM AND ORDER

This matter is before the court on plaintiff's Motion to Compel Discovery Pursuant to Rule 37. (Doc. 34) Defendant has filed his response in opposition to plaintiff's motion (Doc. 42), and plaintiff has filed his reply (Doc. 46).

Defendant filed a surreply (Doc. 51), without first obtaining leave of court. There is no provision in D. Kan. Rule 206(b) for such memoranda, therefore, the court will not consider defendant's surreply.

Plaintiff moves, under Fed. R. Civ. P. 37, for an order directing defendant Dr. Wilbur Hilst to execute an authorization to the Kansas Board of Healing Arts for the release of certain information and materials concerning the defendant, or, in the alternative, directing the Board of Healing Arts to provide the information within the scope of the authorization. Defendant argues that the information plaintiff seeks is both privileged, under Kansas law, and

irrelevant to any genuine and material issue presented in this case. Defendant argues that plaintiff is improperly attempting to obtain documents, which are not otherwise discoverable directly from the party having custody of them, by obtaining an order requiring defendant, who is entitled to access to the documents upon his request, to execute an authorization for the release of the documents to himself, and then produce them to plaintiff.

On May 24, 1990, plaintiff filed this medical malpractice action against defendant based on diversity jurisdiction alleging that plaintiff has lost an appreciable chance of survival, that he has suffered a deterioration in the quality of his life, and that his wife has sustained loss of consortium as a result of defendant's negligent failure to make a timely diagnosis of plaintiff's colon cancer. Plaintiff argues that defendant had a duty to inform him, prior to his examination in June of 1988, which included x-rays and a diagnostic workup, that the Board of Healing Arts had notified him that he should cease performing radiology studies in his office. The Board advised defendant that if he did not enter into a stipulation with the Board within two weeks, agreeing not to perform x-rays and laboratory tests in his office, it would pursue formal adjudicative proceedings to restrict his practice. On or about December 9, 1988, defendant entered into a stipulation with the Kansas State

Board of Healing Arts whereby defendant was precluded from performing diagnostic radiology procedures and laboratory studies other than routine lab work in his office.

Plaintiff, by this motion, specifically requests the following documents:

1. All correspondence or communication to or from the Board pertaining to the Defendant Wilbur Hilst from January 1, 1988 through February 1, 1989.
2. Copies of any meetings of the Board or any of its committees which pertain to the Defendant Wilbur Hilst.
3. Any reports or records pertaining to the defendant Wilbur Hilst as they may bear upon his ability to perform laboratory work and/or x-rays between the above described dates.

Fed. R. Civ. P. 26(b)(1) provides:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. (Emphasis added.)

Fed. R. Civ. P. 26(b)(1) sets forth a two-step process in determining the scope of discovery, whether the information sought is privileged and, if not, whether the information sought is relevant.

The court first addresses the issue of whether the documents, which plaintiff seeks, are privileged. In doing so, the federal court must look to state law to determine the

existence of a privilege. Fed. R. Civ. P. 501 provides:

In civil actions and proceedings, with respect to an element of a claim or defense as to which state law supplies the rule of decision, the privilege of a witness, person, government, State, or political subdivision thereof shall be determined in accordance with State law.

In determining which records of the Kansas Board of Healing Arts plaintiff is entitled to obtain through discovery, the court finds that several Kansas statutes are applicable. K.S.A. 1990 Supp. 65-2839a governs investigations and proceedings conducted by the Kansas Board of Healing Arts and records related thereto. K.S.A. 65-2839a(c) specifically provides that peer review or risk management records or information received and records kept by the Board, as a result of an investigation, shall be confidential and shall not be disclosed.

K.S.A. 65-2840c authorizes the Board to establish and appoint review committees, as necessary, to implement the Kansas Healing Arts Act. A "peer review committee", under K.S.A. 1990 Supp. 65-4915(a)(4) is:

a committee of or employed, designated or appointed by, a health care provider group and authorized to perform peer review.

K.S.A. 1990 Supp. 4915(a)(2)(D) defines a health care provider group as a review committee operating pursuant to K.S.A. 65-2840b through 65-2840d. Thus, some of the documents which plaintiff seeks from the Board may be records of the peer review committees. Disclosure of these records would be governed by K.S.A. 1990 Supp. 65-4915(b) which provides:

[T]he reports, statements, memoranda, proceedings, findings and other records of peer review committees or officers shall be privileged and shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible in evidence in any judicial or administrative proceeding. Information contained in such records shall not be discoverable or admissible at trial in the form of testimony by an individual who participated in the peer review process. This privilege may be claimed by the legal entity creating the peer review committee or officer, or by the commissioner of insurance for any records or proceedings of the board of governors. (Emphasis added.)

It is clear that any records requested by plaintiff, which are exclusively records of the peer review committee, may be subject to a claim of privilege. However, defendant is not a proper party to claim the privilege.

Other records which the Board may have in its possession and which may be subject to a claim of privilege, are patient records. The current Kansas statute governing the physician-patient privilege is K.S.A. 1990 Supp. 60-427 which states in relevant part:

(b) Except as provided by subsections (c), (d), (e) and (f), a person, whether or not a party, has a privilege in a civil action or in a prosecution for a misdemeanor, other than a prosecution for a violation of K.S.A. 8-1567 and amendments thereto or an ordinance which prohibits the acts prohibited by that statute, to refuse to disclose, and to prevent a witness from disclosing a communication, if the person claims the privilege and the judge finds that: (1) The communication was a confidential communication between patient and physician; (2) the patient or the physician reasonably believed the communication necessary or helpful to enable the physician to make a diagnosis of the condition of the patient or to prescribe or render treatment therefor; (3) the witness (i) is the holder of the privilege, (ii)

at the time of the communication was the physician or a person to whom disclosure was made because reasonably necessary for the transmission of the communication or for the accomplishment of the purpose for which it was transmitted or (iii) is any other person who obtained knowledge or possession of the communication as the result of an intentional breach of the physician's duty of nondisclosure by the physician or the physician's agent or servant; and (4) the claimant is the holder of the privilege or a person authorized to claim the privilege for the holder of the privilege.

Any non-party patient records which the Board has in its possession, would be subject to a claim of privilege by statute. Again, the defendant may not be the proper party to claim the privilege.

The other records of the Board which plaintiff seeks are governed by K.S.A. 1990 Supp. 65-2839a(c) and K.S.A. 1990 Supp. 65-2898a and are confidential. Defendant argues that the documents which are made "confidential," by statute, are also "privileged" and therefore, not subject to discovery. Defendant equates the terms confidential and privileged and uses them interchangeably. However, the two concepts are not synonymous. While a grant of privilege may preclude discovery, a grant of confidentiality does not. A confidentiality provision in a statute may not always create an evidentiary privilege, particularly where the legislature did not explicitly create such a privilege. Merely asserting that a state statute declares that the records in question are "confidential," does not make out a sufficient claim that the records are "privileged" within the meaning of Fed. R. Civ. P.

26(b)(1) and Fed. R. Evid. 501. Van Emrik v. Chemung County Dept. of Social Services, 121 F.R.D. 22 (W.D.N.Y. 1988).

There is no evidence before the court that the legislature intended to create an evidentiary privilege when it enacted K.S.A. 1990 Supp. 65-2839a(c) or K.S.A. 1990 Supp. 65-2898a. It is more likely that the legislature intended to afford individuals under investigation, as well as individuals whose records were submitted, some protection from the disclosure of matters related to the proceedings themselves, as well as, documents acquired during an investigation. The court notes that the legislature was explicit in K.S.A. 1990 Supp. 65-4915(b) when privilege was intended. In contrast, however, K.S.A. 1990 Supp. 65-2839a(c) provides:

Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, other reports or oral statements relating to diagnostic findings or oral treatment of patients, information from which a patient or a patient's family might be identified, peer review or risk management records or information received and records kept by the board as a result of the investigation procedure outlined in this section shall be confidential and shall not be disclosed. (Emphasis added.)

K.S.A. 1990 Supp. 65-2898a(a) provides, in part:

Any complaint or report, record or other information relating to a complaint which is received, obtained or maintained by the board shall be confidential and shall not be disclosed by the board or its employees in a manner which identifies or enables identification of the person who is the subject or source of such information except:

(1) In a disciplinary proceeding conducted by the board pursuant to law or in an appeal of the order of the board entered in such proceeding,

or to any party to such proceeding or appeal or such party's attorney.

(2) To the proper licensing or disciplinary authority of another jurisdiction, if any disciplinary action authorized by K.S.A. 65-2836 and amendments thereto has at any time been taken against the licensee or the board has at any time denied a license to the person.

(3) To a hospital committee which is authorized to grant, limit or deny hospital privileges, if any disciplinary action authorized by K.S.A. 65-2836 and amendments thereto has at any time been taken against the licensee or if the board has at any time denied a license to the person.

(4) To the person who is the subject of the information, but the board may require disclosure in such a manner as to prevent identification of any other person who is the subject or source of the information. (Emphasis added.)

The legislature did not use the term privilege in either K.S.A. 1990 Supp. 65-2839a(c) or K.S.A. 1990 Supp. 65-2898a(a). It also did not specifically provide that the records would not be admissible or discoverable. Therefore, while the court finds that although certain documents in possession of the Board of Healing Arts may be confidential, they are not subject to a privilege and may be disclosed in a civil action when relevant under Fed. R. Civ. P. 26(b)(1).

The court must now consider whether the information and materials sought by plaintiff are relevant and thus, discoverable. An objection that the information sought will be inadmissible, is without merit if the proposed discovery is reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1).

Plaintiff argues that the identified records of the Board are relevant to the issues of medical negligence, as

well as to the credibility of defendant. Plaintiff contends that the evidence may establish that defendant was aware and knew, or should have known, that he should not practice in the area of radiology. Defendant urges that there is no basis to support the conclusion that the information and materials sought by plaintiff are relevant.

Relevancy is to be broadly construed for discovery issues and is not limited to the precise issues set out in the pleadings. Relevancy, for purposes of discovery, has been defined by the United States Supreme Court as encompassing "any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351, (1978). Discovery requests should be considered relevant if there is any possibility that the information sought may be relevant to any issue in the case and should ordinarily be allowed, unless it is clear that the information sought can have no possible bearing on the subject matter of the action. See Marker v. Union Fidelity Life Ins. Co., 125 F.R.D. 121 (M.D.N.C. 1989); Morse/Diesel, Inc. v. Fidelity & Deposit Co. of Maryland, 122 F.R.D. 447 (S.D.N.Y. 1988); Gagne v. Reddy, 104 F.R.D. 454 (D. Mass. 1984).

Plaintiff's claims arise out of defendant's alleged negligent failure to make a timely diagnosis of plaintiff's colon cancer. The court, after review of plaintiff's complaint, the identified documents requested by plaintiff,

and the applicable law, finds that the requested documents are relevant for discovery purposes.

The court next considers whether the motion to compel discovery should be granted on a procedural basis. First, plaintiff submitted a stipulation and agreed order to defendant requiring the Kansas Board of Healing Arts to produce specific documentation regarding defendant. Defendant found the proposed order unacceptable. Thereafter, on December 17, 1990, plaintiff served an Amended Notice for Deposition Duces Tecum upon defendant with an authorization to be executed by defendant at the time of his deposition to be taken on December 19, 1990. Defendant declined to sign the authorization. Now plaintiff seeks an order under Fed. R. Civ. P. 37 requiring the defendant to execute the authorization or, in the alternative, the Board of Healing Arts to provide the information within the scope of the authorization.

Essentially, plaintiff is attempting to obtain records, through defendant, which he cannot directly obtain from the Board by informal means, due to the claim of statutory confidentiality. K.S.A. 1990 Supp. 65-2898a(a) allows for disclosure of the Board records to specific individuals including the person who is the subject of the information. This provision allows defendant access to the records in question.

The issue before the court is whether a party who has

access to records which are not records generated by him may be required by the court to execute an authorization to obtain such access for the sole purpose of producing them in civil litigation. Fed. R. Civ. P. 34 provides:

Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents . . . which are in the possession, custody or control of the party upon whom the request is served. (Emphasis added.)

The issue becomes whether the records, which are in the Board's possession, are within the "control" of defendant since he has access to the documents. If the records are in defendant's control, the court could order him to grant to plaintiff an authorization to inspect the documents in question. United States ex rel. Woodard v. Tynan, 776 F.2d 250 (10th Cir. 1985). The court concludes, however, that a right of access is not alone sufficient control to permit the court to require defendant to produce documents under Fed. R. Civ. P. 34. The documents in question are not those of defendant, but the Board of Healing Arts. They are documents assimilated, collected, or prepared by the Board in the ordinary course of the Board's business. Contrary to the documents involved in Woodard, which were income tax returns of the party, the records were not generated by defendant and were not furnished to the Board by him. They are the records of a third party, who is bound by law to provide access to the records to defendant. Even when access is provided, certain

information may be deleted to conceal the identity of particular individuals referenced in the records. Therefore, the court concludes that the records are not under the control of defendant and defendant may not be required to produce an authorization for access to the records.

In the alternative, plaintiff requests that the court order the Board to provide the information within the scope of the authorization. The Board is a not a party to this action. Therefore, the court has no jurisdiction over the Board to order production of documents. Fed. R. Civ. P. 45 provides that a party may obtain documents from a non-party by service of a subpoena for the production of documentary evidence. The records may be obtained by issuance of a subpoena pursuant to Fed. R. Civ. P. 30(a). Until such time as a subpoena is served upon the Board to produce the records, the court has no jurisdiction to compel their production. Thereafter, if the Board fails to comply with the subpoena, the court may then consider an order to compel compliance with the subpoena.

Plaintiff's motion must be denied for another reason. Plaintiff has filed this motion under Fed. R. Civ. P. 37 to compel discovery. However, plaintiff has not followed a discovery procedure which the court may enforce under Rule 37. Plaintiff's notice to take depositions is deficient in that the authorization, which plaintiff requests be executed, requests documents other than the documents which are the

subject of this motion. The authorization requests the following documents:

[A]ll hospital records, physician's reports, physician's reports, outpatient records, office notes, x rays, nurse's notes, or reports of any other service within a hospital or within a physician's office, limited to the records of the undersigned

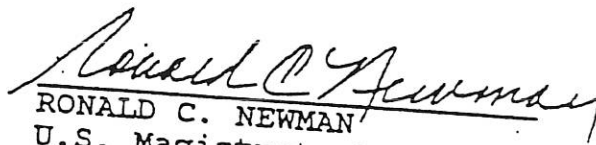
These are not the records which are the subject of plaintiff's motion. The court will not require execution of an authorization which does not properly identify the requested records. Further, as noted above, the court does not find a basis for ordering the requested production under Fed. R. Civ. P. 34.

Therefore, the court overrules plaintiff's request to order defendant to execute an authorization or, in the alternative, order the Board of Healing Arts to provide the information requested.

Copies of this order shall be mailed to counsel of record for the parties.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 29th day of March, 1991.


RONALD C. NEWMAN
U.S. Magistrate Judge

NAME _____ LICENSE NUMBER _____

SSN _____ ZIP CODE _____

The information requested in questions 18-43 are being collected in accordance with KSA 65-1113. These statistics will be utilized to make future statewide health workforce planning decisions. Please complete the questions as accurately as possible and return this page along with your renewal form. The information provided will be confidential and will not be disclosed or made public except for statistical purposes.

18. Sex: Male Female
19. Birth Date: _____
month- day year
20. Race: 1. White 2. Black 3. Native American 4. Asian or Pacific Islander 5. Other (specify) _____
21. Are you of Hispanic origin or descent? Yes No
22. Languages that you speak: 1. English 2. Spanish 3. Sign Language 4. Other (specify) _____

23. Please indicate your practice specialties (please use the appropriate codes from the instruction sheet).

Please complete this question even if you have completed question 11 on the first page.

Specialty Code

Are you board certified in these specialties?

Specialty code #1: _____

Specialty code #2: _____

Specialty code #3: _____

Yes No

Yes No

Yes No

24. Are you currently enrolled in a residency program? Yes No (Please complete this question even if you answered question 9 on the first page.)

at _____
Institution City State Zip Code + 4

25. Do you provide direct patient care in Kansas? Yes No (if "No," please skip to the signature line below)
(Direct patient care means services provided to an individual patient, including personal contact, telephone consultations and related record keeping. It includes patient services provided by all physicians, including radiologists and pathologists. It excludes time spent on call and in providing training, teaching or research.)

26. How many hours of direct patient care do you provide in total in Kansas in a typical week? _____ Hours

IN THE QUESTIONS THAT FOLLOW, PLEASE CHECK THAT THE SUM OF THE HOURS (IF ANY) YOU ENTER AT QUESTIONS 29, 34, 39 AND 43 EQUALS THE TOTAL YOU HAVE ENTERED FOR QUESTION 26. THANK YOU.

Practice Site #1: (principal practice site)

27. Address: _____
Street Address Suite/Apt City

State Zip Code + 4 Phone Number Fax Number

28. What kind of practice setting is practice site #1? (Please use the appropriate code found on the back of this page) _____

29. How many hours of direct patient care do you provide at practice site #1 in a typical week? _____ Hours

30. Of the hours you spend in direct patient care at site #1, what percentages are in:
(please refer to the specialty codes you listed in question 23)

Specialty 1: _____ %
Specialty 2: _____ %
Specialty 3: _____ %
100 %

31. Do you have another direct patient care site in Kansas? Yes No

IF YOUR ANSWER TO QUESTION 31 IS "NO," PLEASE SKIP TO THE SIGNATURE LINE BELOW.

Practice Site #2:

32. Address: _____
Street Address Suite/Apt City
State Zip Code + 4 Phone Number Fax Number

33. What kind of practice setting is practice site #2? (Please use the appropriate code found at the end of this page) _____

34. How many hours of direct patient care do you provide at practice site #2 in a typical week? _____ Hours

35. Of the hours you spend in direct patient care at site #2, what percentages are in:
(please refer to the specialty codes you listed in question 23)
Specialty 1: _____ %
Specialty 2: _____ %
Specialty 3: _____ %
100 %

36. Do you have another direct patient care site in Kansas? _____ Yes _____ No

IF YOUR ANSWER TO QUESTION 36 IS "NO," PLEASE SKIP TO THE SIGNATURE LINE BELOW.

Practice Site #3:

37. Address: _____
Street Address Suite/Apt City
State Zip Code + 4 Phone Number Fax Number

38. What kind of practice setting is practice site #3? (Please use the appropriate code found at the end of this page) _____

39. How many hours of direct patient care do you provide at practice site #3 in a typical week? _____ Hours

40. Of the hours you spend in direct patient care at site #3, what percentages are in:
(please refer to the specialty codes you listed in question 23)
Specialty 1: _____ %
Specialty 2: _____ %
Specialty 3: _____ %
100 %

41. Do you have another direct patient care site in Kansas? _____ Yes _____ No

IF YOUR ANSWER TO QUESTION 41 IS "NO," PLEASE SKIP TO THE SIGNATURE LINE BELOW.

42. If you answered "Yes" to question 41, how many other direct patient care sites do you have in Kansas? _____

43. If you answered "Yes" to question 41, how many hours in total in a typical week do you spend in direct patient care in all of your other practice sites (those referred to in question 42) combined? _____ Hours

SIGNATURE DATE

Work Setting Codes (Questions 28, 33 and 38)

- 1 Individual Practitioner's Office
- 2 Partnership/Group Practice Office
- 3 Free Standing Clinic
- 4 Community Hospital
- 5 Federal Hospital or Facility
- 6 School/University/Teaching Hospital
- 7 State Hospital
- 8 County or City Facility
- 9 Group Health Plan or HMO
- 10 Nursing Home
- 11 Business/Industrial Establishment
- 12 Administrative/Regulatory Agency
- 13 Other (Specify) _____

TESTIMONY BEFORE THE SPECIAL COMMITTEE ON
GOVERNMENTAL ORGANIZATION

By Richard Oxandale, General Counsel,
Kansas Department Of Revenue

October 7, 1997

I. OVERVIEW

The Special Committee on Governmental Organization has requested information on what statutes or regulations require or allow the Department of Revenue to collect and maintain personal information on the citizens of Kansas, and what statutes or regulations and policies govern the release of such personal information. Further, the Committee has asked what policies the Department has developed regarding the acquisition and release of such information, and what recent legislation that the Department of Revenue has proposed pertaining to such matters.

The Kansas Department of Revenue is required to collect personal information through tax, vehicle, property valuation, and personnel statutes and regulations. This information is, in part, directly required by statute or regulation and, in part indirectly required where the individual needs to supply secondary information to meet the primary statutory requirements (such as where an individual lists the names of bank accounts to meet the requirement to list all income).

An analysis of our answer will be presented by the various functions of the Department of Revenue, in particular tax administration and collection, vehicle and dealer licensing and regulation, property appraisal, and Department of Revenue personnel matters.

II. TAXATION

A. INDIVIDUAL INCOME TAX

Pursuant to K.S.A. 79-3220a every individual required to file a federal income tax return, and any other individual whose gross income exceeds the sum of the individual applicable Kansas standard deduction and Kansas personal exemption must file a Kansas income tax return stating specifically such information as is required by the Kansas forms, and rules and regulations of the Kansas Department of Revenue. Such tax return information includes the individual's name, mailing address, social security number, marital status, resident status, and the amount and sources of income. Additionally the federal return requires dependent information such as the name, age, and social security number of the dependent, and how many months the dependent resides in the taxpayers home. Further the form includes medical and dental expenses, and other taxes such as real estate, and personal property taxes. Additionally, other required information could include personal property, amount of mortgage interest, gifts to charity, job expenses, and interest and individual income from a particular source. Further, the department may maintain filing history on the taxpayer for both federal and state returns, and whether the taxpayer owes back taxes for prior years.

The dissemination of such information is governed by K.S.A. 79-3234 which provides, in part, that the Department of Revenue is prohibited from divulging such information except on proper judicial order. The term "proper judicial order" is not further defined or directly explained by Kansas case law. Additionally, the state allows for the publication of statistics from the taxpayer information provided that the tax information

is aggregated so that it prevents the identification of a particular taxpayer. Further, returns may be inspected by the Attorney General or other legal representatives of the State. The term "legal representatives of the state", is not further defined. Additionally, this section allows for other exceptions to the prohibition against the dissemination of information, such as providing certain information to a debt collection agency contracting with the Secretary of Revenue pursuant to K.S.A. 75-5140. Also, the Legislative Post Auditor may have access to all income tax reports and returns in accordance with K.S.A. 46-1106 and K.S.A. 46-1114. Further, individual income tax information may be provided to the Department of Wildlife and Parks in regard to fraud investigations, and the Secretary of Revenue may permit the Commissioner of the Internal Revenue Service of the United States and state taxing officials of other states to inspect individual income tax return under this act. Finally, certain information may be made available to the Executive Director of the Kansas Lottery and Executive Director to the Kansas Racing Commission.

B. SALES TAX

Sales tax information is governed by K.S.A. 79-3909 and other statutes and generally does not contain personal information. However, K.S.A. 79-3608 requires retailers to obtain sales tax registration, and the application contains the retailers, name, address, names of the owners, type of business, line of business, business location and mailing address. Thus the records will contain such information as owner's name and address. Further, if the business is a partnership or individual proprietorship, the sales tax information could contain such directly

personal information as gross sales and could contain profit and loss statements.

K.S.A. 74-2424, K.S.A. 75-5133, and K.S.A. 79-3914 all contain provisions relevant to the confidentiality of sales tax information. Generally these statutes prohibit the release of such information other than pursuant to "proper judicial order" (again not further defined), or to the Internal Revenue Service or other state taxing agencies for tax administration purposes, or to the Kansas Attorney General, or other state representatives or to the Legislative Post Auditor.

C. MOTOR FUEL TAX

K.S.A. 1996 Supp. 79-3405 in dealing with motor fuel manufacturers, importers/exporters, and retailers provides, for the purpose of determining whether an existing surety bond is sufficient, that the Director of Taxation may require any such distributor, manufacturer, importer/exporter, to furnish a financial statement in such form as the Director may require. Such financial statement could contain personal information of the owner or proprietor. It appears there is no statute making this information confidential.

D. MINERAL SEVERANCE TAX

The Mineral Severance Tax, as set forth in K.S.A. 79-4221, requires a monthly return by the purchaser or operator and includes the name of the operator or seller and the price paid for oil or gas. Such information could be considered personal income information and is subject confidentiality under to K.S.A. 75-5137 with exceptions similar to the individual income tax provision.

E. BANK PRIVILEGE TAX

The Kansas Bank Privilege Tax, as set forth in K.S.A. 79-1110, requires the listing of the percentage of ownership of the executive officers, majority shareholders, and board of directors of any bank or bank holding company. Such information is confidential under K.S.A. 79-1119 with exceptions similar to the individual income tax provision.

F. LIQUOR TAX

The Liquor License statutes require extensive personal information to be collected, including the name, address, social security number, birth place, marital status, and drivers license number of the owner(s) of a given liquor retailer or liquor-licensed establishment. Further, the application requires information on whether the applicant has ever been convicted of a felony or morals charge.

K.S.A. 75-5133 provides that except or provided by law all information from Director of Taxation for licensure or reports shall be confidential. However, under section (b), such information may be provided to the Attorney General and the Office of Legislative Post Audit. Further, certain information may be turned over to debt collection agency contracting with the Secretary of Revenue pursuant to K.S.A. 75-5140 *et seq.* and under certain circumstances the county appraiser to ensure correct valuation of the property.

G. INHERITANCE TAX

K.S.A. 79-1564 requires the filing of an inheritance tax return within nine (9) months of the decedent's death. The return requires certain personal information including the assets of the estate and the names and

addresses and relationship of the heirs. Pursuant to K.S.A. 79-1587, this information is confidential except that it may be released to the administrator or executor of the estate or any heir or next of kin who may have a material interest in the estate. Further, the statute provides that such information may be released upon proper judicial order and may be released to the Attorney General, or other legal representatives of the state, or the Legislative Post Auditor, and to the internal revenue service or other state taxing officials for tax administration purposes.

III. DIVISION OF VEHICLES

K.S.A. 8-2119 requires the maintenance of certain driver's license information including the name of every licensee whose license has been suspended or revoked by the Division, with a notation of the reason for such action. Additionally, the Division maintains a file on all accidents and an abstract of convictions of courts of records. Further K.S.A. 8-234 *et seq.* requires that the department maintains the following information on all licensees: name, date of birth, address, photograph, and signature.

Also, the Kansas Department of Revenue, maintains information on titles and registrations of motor vehicles as generally provided in K.S.A. 8-127 *et seq.* The Department maintains such information as description of the vehicle, the name of the owner, residence or bona fide place of business address, and the name of any lien holder and the mileage of the vehicle.

Drivers license information is generally open to access by the public in accordance with the Kansas Open Records Act, K.S.A. 45-215 *et seq.* However, this act is now limited by federal law, as will be subsequently explained, and K.S.A. 74-2012 further prohibits the release of records

pertaining to the physical or mental condition of the individual, expungement information, photographs taken in connection with the issuance of a drivers license, and some diversion agreements.

Federal law, as found in 18 U.S.C. § 2721, contains the now well-known "opt-out" provision which provides that a state motor vehicle department must provide a vehicle operator with the opportunity to prohibit the disclosure of drivers license information maintained on said licensee, except that information on motor vehicle safety, vehicle theft, motor vehicle emissions may be divulged and other exceptions are indicated in the statute. Additionally the Act provides for the release of vehicle and drivers license information to any insurer for insurance support organization in connection with claims investigations, anti-fraud, or rating and underwriting.

Additionally K.S.A. 1966 Supp. 8-2404(c) requires all automobile dealers to be licensed. The license application contains the name, address, and certain financial information. While this information is subject to public access, under the policy of the Division of Vehicles, such information is subject to the "opt-out" provision under federal law, and thus may be made confidential.

IV. DIVISION OF PROPERTY VALUATION

Pursuant to K.S.A. 79-1477 the Property Valuation Division maintains a data base which contains information on residential and business property within Kansas including the name of the owner of the property, the location, the sales price, and certain demographic information. This information is generally accessible under the Kansas Open Records Act.

The division also maintains files on motor carriers and public utilities. While public utilities are generally corporate entities, motor carriers are often owned by individuals, and the division maintains tax returns and appraisal information. Financial information contained in these records is not disclosable under the Kansas Open Records Act; however, all other such information may be disclosed.

The Division also formulates a ratio study on real property valuation. The data for this study includes the name, address of the buyer and seller of any given real estate, and sales price, location, and other information concerning the sale. Such data is generally not available to the public pursuant to K.S.A. 1996 Supp. 79-1437(f), however, it can be accessed by individuals owning the same class of property.

V. PERSONNEL

The Kansas Department of Revenue has approximately 1200 employees and maintains personnel information on such employees pursuant to Kansas Administrative Regulation 1-13-1a. The personnel records include the employee's name, position, transfers, promotions, demotions, separations, changes of pay rate, leaves of absence, and other changes in employment status. Further, performance reviews, letters of reprimand, and letters of commendation are in the personnel file.

The Kansas Open Records Act, particularly K.S.A. 45-221, provides an exception to personnel records whereby such information shall not be disclosed except the exception does not apply to the name, position, salary, or length of service of such employees.

VI. KANSAS OPEN RECORDS ACT

K.S.A. 45-215 *et seq.* provides that it is the public policy of Kansas that public records should be open to anybody unless otherwise provided by the act. A public record is defined in the act as any record maintained by the department. The Kansas Open Records Act acknowledges the effect of the confidentiality statutes contained in other sections of the Kansas Statutes (consequently it acknowledges the exceptions previously mentioned in this testimony) and further lists other exceptions to the open records. However, the thrust of the act is to make all other records open to the public. This act is a change of much earlier legislation which made public only those records required to be kept by an agency and not those maintained by an agency.

VII. LEGISLATION

The Taxpayer Equity and Fairness Act, as contained in House Bill 2105 and passed into law by the 1996 Legislature, provides certain adjustments to the confidentiality and release of information maintained by the Department of Revenue. The Act requires the Secretary of Revenue to make available administrative rulings of the Department, which effect responsibilities of the taxpayer, and information contained in the department's private letter rulings. Such information is to be provided in a revised format which maintains the confidentiality of the taxpayer and any given taxpayer information. Further, the legislation prohibits the release of certain taxpayer information to county appraisers or the Director of Property Valuation except as otherwise provided by law. Finally, the legislation allows additional latitude to the Secretary of Revenue in contracting with debt collection and other independent contract services

VIII. CLOSING COMMENTS

With the advent of the records of the Department of Revenue being maintained in a computer data base with potential accessibility through Kansas INK or the internet, accessibility of Department records is increasingly being sought. In certain cases, requests have been made of the Department to create computer programs to select and possibly create documents which the applicant desires. An example of this is a court case in which a company requested the Department to provide any records which contain certain changes. A program must be developed to identify the changed records.

Further, requests for information are becoming more varied and sophisticated. Attorneys in court cases will often attempt to use the Kansas Open Records Act as a discovery device for the Department to provide any information related to a particular topic as opposed to a request for a particular document. Finally, we have encountered questions in interpreting exceptions to confidentiality. An example of this concern deals with the phrase "proper judicial order." We have interpreted this phrase to mean a court order signed by a judge as opposed, for example, to a subpoena issued by a court clerk or administrative court order.

Attachment 6

No assurance medical records are private

BALTIMORE (AP) — Most people don't want strangers to have access to their health records. But if they are on vacation and have to go to an emergency room far from home, they want the doctors there to have all the information they need to provide treatment.

A panel of security experts agreed Wednesday that there are many such conflicts between privacy and treatment that will make it difficult to come up with standards for protecting medical records from unauthorized access.

The Clinton administration has pro-

posed broad new privacy protections for medical records with exceptions only for law enforcement, public health and medical research. Under the proposal it would be a federal crime to disclose or use information improperly.

Dale Miller, a security consultant who has done research on maintenance of privacy in medical records, told the National Information Systems Security Conference there are many ways such data are distributed beyond what most people realize.

One example is group practices in

which doctors take turns on weekend on-call duty. That means the on-call doctor must have access to the records of every patient who might call.

Miller also said his research found that in a large hospital, 80 to 120 people may have access to medical records. They would include the person who wheels a patient to another part of the hospital for an X-ray or other procedure.

People with access to medical records are not limited to doctors, nurses and hospital administrators.

Blood banks have information

about donors, schools have immunization records and health forms and businesses often have detailed information through insurance records. Nearly all prescription drug records are stored electronically with very little regulation of access.

Carl Landwehr of the Naval Research Laboratory said the best solution is a system that tracks who gains access to electronic records and then holds individuals accountable who look at records without a legitimate reason.



Information Network of Kansas

**Legislative
Testimony**

TO: Senate Committee on Federal and State Affairs
FROM: Jeff Fraser, Information Network of Kansas
RE: Senate Bill 393
Date: January 27, 1998

Good morning Chairperson Oleen and distinguished members of Senate Committee on Federal and State Affairs. My name is Jeff Fraser and I am the Network Manager of the Information Network of Kansas. On behalf of the Information Network of Kansas, I would like to thank you for the opportunity to comment on Senate Bill 393.

As most of you are aware, The Information Network of Kansas (INK) was created by the Kansas Legislature in 1990 to provide electronic access to public information maintained in the State of Kansas. In order to achieve the goals established by the legislature, INK maintains Kansas's official Internet presence and actively assists State agencies with making information available online. Individuals and businesses currently have access to a wide variety of public information online with INK.

The responsibility the State of Kansas has in protecting the privacy of its citizens is obvious. With the recent advancements in technology, information collection, retrieval and manipulation is much easier than ever before. This gives citizens access to important information that was previous extremely difficult, if not impossible to acquire. With a couple of clicks of a mouse, a person can quickly locate necessary tax forms, check for licensed day care in their neighborhood or retrieve the full text of important legislation. These are just a few examples of the types of useful information currently maintained

online by state agencies. However, in addition to information that citizens have a legitimate need for, agencies also routinely collect personal information on the citizens of Kansas. As the steward of information databases containing personal information, the state of Kansas has a responsibility to protect its citizens' privacy.

Senate Bill 393 would authorize the Joint Committee on Computers and Telecommunications to examine current laws and policies concerning the collection and access of personal information and to suggest legislation when necessary to "preserve the integrity of and authorized access to personal information gathered or maintained by state agencies." I believe the Joint Committee on Computers and Telecommunications is the appropriate committee to undertake this important responsibility.

Thank you for allowing me the opportunity to comment on Senate Bill 393. If I can be of any assistance, please contact me.