

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:05 a.m. on February 2, 1998, in Room 254-E of the Capitol.

All members were present except:
Senator Donald Biggs - excused

Committee staff present: Mary Galligan, Legislative Research Department
Robin Kempf, Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Midge Donohue, Committee Secretary

Conferees appearing before the committee:
Mr. Doug Lawrence, Open Government Alliance, Burlington
Mr. Michael Byington, Envision Governmental Affairs Office, Topeka

Others attending: See attached list.

Senator Oleen called attention to minutes of the January 28 and 29 meetings and advised that action would be taken on them later in the meeting.

She then recognized Senator Becker who introduced Kelly Cook and Elizabeth Landere, students at Trail Ridge Junior High School, Lenexa, who served as pages for the committee today. Senator Oleen recognized Herschel Martin who was paging for Senator Gilstrap and who also served the committee today.

The chair advised that the hearing on **SB 393**, relating to recorded information gathered or maintained by state agencies, would be continued today. She noted that the House was in session and that Representative Jim Morrison, who was listed as a conferee, would be recognized if the House adjourned in time to accommodate his appearance before the committee.

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**

Mr. Doug Lawrence, Burlington, representing Open Government Alliance, spoke neither in support nor in opposition to the bill (Attachment #1). He told the committee the Alliance is neutral on the **SB 393**, but there were significant areas it would like to see addressed; specifically, what constitutes "personal" information, a term, he said, not used in the Open Records Act, and access to electronic versions of records. In regard to the latter, he explained the Alliance felt there should be no special limitations placed on access, or special fees applied to electronic or computer based records; that it was important to look at public records in the context of the Open Records Act without regard to how those records are accessed. Further, Mr. Lawrence stated that decisions to close records should be on a case-by-case basis and specific, and he asked that such decisions continue to be explicit in state law, subject to legislative review.

Mr. Michael Byington, Director, Envision Governmental Affairs Office, Topeka, told the committee his testimony would not address the substance of **SB 393** but, rather, a proposed amendment; specifically, that the bill be amended to include language which would charge the Joint Committee on Computers and Telecommunications with the responsibility of evaluating purchases made by state agencies so that all computer and telecommunications equipment acquired will be accessible to and/or made easily usable by persons with disabilities, (Attachment #2)

Senator Oleen inquired if there was anyone else who wished to offer testimony on **SB 393**. There being none, the hearing was closed.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL & STATE AFFAIRS COMMITTEE, Room 254-E, Statehouse, at 11:05 a.m. on February 2, 1998.

Staff briefed the committee on the Kansas Open Records Act, providing information contained in an October 7, 1997, memorandum to the Special Committee on Governmental Organization, (Attachment #3).

In response to a question raised by a member of the committee, it was explained that the Information Network of Kansas (INK) was created by statute; that one of its purposes is to provide the public with electronic access to public records, and that subscription for this service is provided for by statute. The issue of fees was discussed and the committee was told there is no uniform fee schedule for accessing public records but that the fee must be reasonable and cannot be more than actual cost.

Staff provided the committee with an October 1996 document prepared by Attorney General Carla Stovall on the Kansas Open Records Act (KORA), (Attachment #4). Attention was drawn to page 5 of the document which addresses exceptions to the Act and lists the types of public records which are closed.

Senator Vidricksen, a member of the interim committee that was charged with studying this issue, briefly explained its history and referenced a product of the interim committee's work, a list of records a public agency is not required to disclose, (Attachment #3)

In response to questions from the committee, staff advised that the Kansas Open Records Act does not define "personal", "confidential" or "privileged".

Senator Oleen called attention to the deadline for requests for introduction of bills and said that, even though the committee was exempt from that deadline, she nevertheless tried to work close to its framework for most issue-bills.

Senator Oleen told the committee she had received a request for introduction of a bill relating to the qualifications for appointment to Adjutant General to make the qualifications similar to those in other states. She indicated she did not have a prepared draft of the proposed bill but would like it to be introduced in concept.

Senator Gooch moved for introduction of the bill. Senator Vidricksen seconded the motion. The motion carried.

Senator Vidricksen advised the chair he had two bills he would like to have introduced relating to wineries and breweries.

Senator Becker moved for introduction of the bills. Senator Jones seconded the motion. The motion carried.

Senator Oleen called attention to **SB 400**, relating to assignment of space and facilities in the state capitol, which was previously heard by the committee.

Senator Jones moved that the bill be favorably reported to the full Senate. Senator Vidricksen seconded the motion. The motion carried.

Senator Becker moved for approval of the minutes of the January 28 and 29 meetings. Senator Vidricksen seconded the motion. The motion carried.

The meeting adjourned at 12:00 noon. The next meeting is scheduled for February 3, 1998.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: 2-2-98

NAME	REPRESENTING
General [unclear]	SOS
[unclear]	Intern - Sen. Lyoon
Andy Scharf	D of A / DISC
Joe [unclear]	KSHS
Marsha Strubbe	CWA
Janet Christ	SOS
Jeff Fraser	INK
DOUG LAURENCE	open Gov. Alliance
D FURNAS	KANSAS Press
RAY LAUBER	DOA, DPS
Ann Hornish	Kansas Insurance Dept.
CARIE BECENT	EMOST
Michael Peterson	Peterson Public Affairs
Tom Dishes	McGILL ASSN
Kim Gulley	League of KS Municipalities
Preston Barton	DD Council
Sharon Huffman	KCDC
Michael Byington	Environ

Open Government Alliance
902 Miami
Burlington, Ks 66839

January 27, 1998

The Open Government Alliance is a loose coalition of individuals and organizations, which share an interest in keeping government open to public access through strong open meetings, and open records laws.

I work with individuals and organizations, which, for one reason or another, have a reason to interact with governmental entities. The interests among our alliance are diverse ranging from property tax, schools, and the media.

The Alliance believes this is a critical year for issues of Open Government. As the difference between public and private is blurred by the technology of government, it is important to draw clear and distinct lines regarding what information and decision-making processes are accessible to the public.

I want to take a few moments to express concerns about SB 393. While the Alliance is neutral on the bill, there are significant areas, which need to be addressed.

SB 393 essentially creates a significant, and on going study relating to "Personal Information" and how governmental entities manage that information.

First, the concept of oversight of state agencies' activities relating to personal information has some merit. Everyone is concerned that government should gather and keep only information necessary to the tasks that are appropriate. Section 1, sub i, (Line 4, page 2) directs the Joint Committee on Computers and Telecommunications to perform that task. Someone needs to be asking the question about the necessity of maintaining certain records and information.

That said, we are not sure what "Personal Information" is, and envisioned under this act. Kansas has an Open Records act, which makes a clear statement about the availability of records maintained by government. Essentially, state policy requires that all records maintained or required to be maintained by a governmental entity should be open to the public. From there, specific exemptions, are allowed on a case by case basis. The Open Records Act does not use the term "personal information." One concern regarding this bill, is the lack of a clear indication of what constitutes "personal information."

I believe any legislation, which directs an on going oversight, and review of publicly available records, should provide clear direction as to what information would fall under this definition. And we believe there should be open discussion now, about what information would and should be included in this area.

A second concern is a thread, which runs through this legislation relating to electronic versions of records, and possibly access to records using computers. First, the standing committee assigned to study and monitor this issue is the JCCT. A committee tasked to deal with information systems, computer systems, and telecommunications issues.

Secondly, Section 1, subsection g, refers to "public records systems" in other states.

I believe it is important, to look at public records in the context of the Open Records law without regard to how those records are accessed. Open Records, should be open. There should be no special limitations placed on access, or special fees, applied to electronic, or computer based records.

Access to records which are deemed to be open under state law should be simple, and unfettered. Decisions to close records should be on a case by case issue, and specific. Such decisions should be explicit in state law, and should be subject to a full legislative review.

Sen. Federal & State Affairs Comm.
Date: 2-2-98
Attachment: #1

Choices & resources for people who are blind or low vision



EnvisionSM

PLEASE REPLY TO: Michael Byington, Director
Envision Governmental Affairs Office
P. O. Box 1063
Topeka, Kansas 66601
(785) 575-7477 (local office and voice mail)
(785) 233-2539 (FAX)
mbyington@delphi.com or mbyingto@ink.org

February 2, 1998

TO THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS:

This testimony will be brief. It does not address the substance of this bill, but rather something which needs to be added while the act is open for amendments.

It is essential that the Joint Committee on Computers and Telecommunication also be given a specific charge to evaluate purchases made by State agencies to insure that all computer and telecommunications equipment acquired will be accessible to, and/or easily made usable by, persons who have disabilities. No issue is more important to the future of employment of persons who have disabilities than is this one. The State is indeed required to insure this type of equipment and software accessibility via Section 255 of the Federal Telecommunications Act, and by Section 508 of the Federal Rehabilitation Act. It is extremely logical to articulate this charge specifically in any legislation which increases responsibility of a body which will continue to make major decisions concerning telecommunications. Thus, language should be amended into Senate Bill 393 which will articulate this charge. I shall leave it to the discretion of the Committee and the Revisor to determine the most appropriate location for such language within the bill. Thank you.

Michael Byington

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Tel 316.267.2244 • Fax 316.267.4312

Web ht Sen. Federal & State Affairs Comm.
Date: 2-2-98
Attachment: #2

TO: Special Committee on Governmental Organization

FROM: Theresa Kiernan

RE: Open Records Act
Study Topic No. 1

DATE: October 7, 1997

Kansas Open Records Act

The Kansas Open Records Act is found at K.S.A 45-216 et seq. The act declares the public policy of the state is that public records shall be open for public inspection unless otherwise provided by the act. It also provides that the act shall be liberally construed.

The act applies to any public record. A public record is defined to be any recorded information which is maintained, kept by or in the possession of any public agency. Excluded from the definition of public records are privately-owned records which are not related to functions, activities, programs or operations funded by public funds. Also excluded, are records kept by a legislator or a member of the governing body of a political or taxing subdivision as well as certain records kept by employers for contributions made on behalf of employees for workers compensation, social security, unemployment insurance or retirement.

A public agency is defined to be the state or any political or taxing subdivision, or any office, officer, agency or instrumentality thereof, or other entity receiving or expending and supported in whole or part by public funds. A public agency does not include vendors of property, goods or services, any judge or justice of the supreme court and certain part-time officers of the state or political or taxing subdivisions of the state.

The procedure for requesting access to public records is provided by K.S.A. 45-218 and 45-220. Requests for records must be made in accordance with procedures established by the public agency. Access shall be provided as soon as possible following request but no later than

the end of the third business day following the date the request is received. A written and detailed explanation of reasons for delay in providing access is required to be given. If access is denied, the custodian of the record, upon request, is required to cite the specific provision under which access is denied. The custodian may refuse to provide access to a public record if the request places an unreasonable burden in producing the record or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the agency. Access to records must be allowed during regular business hours of the agency or at reasonable hours if the agency does not maintain regular office hours. A fee may be charged and advance payment thereof may be required for providing access to a public record.

K.S.A. 45-219 provides that abstracts or copies of public records may be made. The procedure for making copies shall be established by the agency. Records shall remain in the control of the agency while copies are made. A fee may be charged and advance payment thereof may be required for copies.

K.S.A. 45-221 provides a list of 44 types of public records which are not required to be disclosed. If a public record contains material not subject to disclosure, the agency is required to separate or delete such material and make available the material which is subject to disclosure pursuant to the act. Records in existence more than 70 years shall become open unless otherwise specifically prohibited.

Under K.S.A. 45-222, any person, the attorney general or a county or district attorney may initiate an action in district court to enforce the provisions of the act. Civil remedies available to enforce the act are injunction, mandamus or other order of the court. Under K.S.A. 45-223, no public agency, officer or employee is subject to damages for failure to provide access to a public record.

Under K.S.A. 21-3914, the crime of unlawful use of names derived from public records is created and defined. It provides that no person shall knowingly sell, give or receive, for the purpose of selling or offering for sale any property or service to persons listed therein, any list of names and addresses contained in or derived from public records. Certain

exceptions are listed in the statute. Subsection (c) provides protection from liability for custodians of public records when complying in good faith with the open records act. - -

1997 Amendments

During the 1997 legislative session, the Open Records Act was amended three times. All amendments were to K.S.A. 45-221 which lists the public records which are not required to be disclosed. The first amendment resolved a statutory conflict created during the previous session; the second amendment related to correctional records pertaining to an identifiable inmate or release (45-221(a)(25)); the third amendment related to financial information of a taxpayer requested by the director of taxation (45-221(b)).

K.S.A. 44-550b, part of the Workers Compensation Act, was amended to limit public disclosure of records kept by the Division of Workers Compensation which relate to private premises safety inspections, medical records, forms collected pursuant to K.S.A. 44-567(b) and accident reports maintained pursuant to K.S.A. 44-550.

1997 Senate Bill No.116

Senate Bill No. 116 was introduced by the Senate Committee on Elections and Local Government at the request of Senator Clark. The bill amended K.S.A. 45-220 and 21-3914 to prohibit any person from using a list of names and addresses derived from public records to solicit gifts or donations from those listed on the public record. It also expanded the crime of unlawful use of names derived from public records to include solicitation of gifts or donations. Violation would constitute a class C misdemeanor.

The bill passed the Senate, but was heavily amended by the House and the provisions of the bill relating to the Open Records Act were deleted in a conference committee.

K.S.A. 45-216 is hereby amended to read as follows: 45-216.

(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.

K.S.A. 1997 Supp. 45-217 is hereby amended to read as follows: 45-217. As used in the open records act, unless the context otherwise requires:

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

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

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

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

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

(2) "Public agency" shall not include:

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

(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.

K.S.A. 45-218 is hereby amended to read as follows: 45-218.

(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.

K.S.A. 1997 Supp. 45-219 is hereby amended to read as follows: 45-219. (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.

K.S.A. 45-220 is hereby amended to read as follows: 45-220.

(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).

K.S.A. 1997 Supp. 45-221 is hereby amended to read as follows: 45-221. (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 or release, except that:

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

(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, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 et seq. and amendments thereto, shall not be disclosed; 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. 1997 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. 1997 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.

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

(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 or the director of property valuation 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.

K.S.A. 45-222 is hereby amended to read as follows: 45-222.

(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.

(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.

K.S.A. 45-223 is hereby amended to read as follows: 45-223.

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.

K.S.A. 45-224 is hereby amended to read as follows: 45-224. All fees, schedules of times for making of copies, hours during which public records may be inspected or copies obtained, procedures for requesting access to or obtaining copies of public records or other policies or procedures which were prescribed or adopted by any public agency pursuant to chapter 171 of the session laws of 1983, insofar as the same are authorized or in accordance with the provisions of this act, shall constitute the fees, schedules, hours and policies or procedures of such public agency for the purposes of this act until changed, modified or revoked by the public agency in accordance with the provisions of this act.

K.S.A. 45-225 is hereby amended to read as follows: 45-225. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and, to this end, the provisions of this act are severable.

Kansas Open Records Act (KORA)
K.S.A. 45-215 et seq.

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I. Introduction

- A. Purpose: It is the public policy of Kansas that "public records shall be open for inspection by any person unless otherwise provided. . . ." K.S.A. 45-216(a).

II. Records Subject to KORA

- A. Act applies to Public Records: "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency. . . ." K.S.A. 45-217(f). Harris Ent. v. Moore, 241 Kan. 59, 60, 62, 63 (1987); Public agency defined at K.S.A 45-217(e). AG Opin. No. 90-14 (record in possession of public agency).

1. Exceptions:

- a. Records owned by private persons which are not related to a governmental function
- b. Records made, maintained or kept by a legislator or member of a governing body

2. A public agency is not required to create a document or prepare a document in a certain form. AG Opin. No. 86-43; Deletion of confidential information or extracting requested information does not require "creation" of a new public record, State ex rel. Stephan v. Harder, 230 Kan. 573 (1982). [Note: case under old records law]

3. Individuals do not have the right to inspect every public document merely because it bears his or her name. AG Opin. No. 85-105.

- B. Public Agency: the state or any political or taxing subdivision, or any office, officer, or agency thereof, receiving or expending and supported in whole or part by public funds. K.S.A. 45-217(e). AG Opin. No. 93-130 (KTA

subject to KORA); AG Opin. No. 82-172 (Pre-KORA opinion); WSU Endorsement Assoc. not subject to KORA.

1. Judges not included. Court records under former record act discussed at Stephens v. VanArsdale, 227 Kan. 676 (1980).
 2. Vendors who sell goods or services to the government are excluded.
- C. Certain Use of Records Prohibited: A list of names and addresses shall not be obtained from public records for the purpose of selling or offering for sale any property or service to the persons listed; i.e., commercial solicitation.
1. This provision does not prohibit use of lists of names obtained from public records to solicit the purchase of property from the persons listed. AG Opin. No. 96-68.
 2. This provision also pertains to the names and addresses of businesses. AG Opin. No. 87-73.
 3. Any person (includes the records custodian) who knowingly sells, gives, or receives records for such purpose is guilty of a class C misdemeanor. K.S.A. 21-3914(b); K.S.A. 45-220. AG Opins. No. 85-34; 84-130; 84-106; 84-45.
 4. The agency may require a person who requests such records containing information to provide written certification that she or he will not use the record for that prohibited commercial purpose. A.G. Opin. No. 87-137.
 5. Cannot circumvent this provision indirectly; a third party who obtains this information from a "requestor" violates the law if it is used for commercial purposes
 - a. A newsletter service which provides lists of names and addresses, obtained from public records, for its subscribers to solicit is the type of activity prohibited under the KORA. AG Opin. No. 86-1.
 - b. Use of information obtained from public records to publish land ownership maps (AG Opin. No. 86-39) and "ownership product" documents (AG Opin. No. 89-47) does not violate the law.

III. Access, Copies, Procedures

A. Access to Records. K.S.A. 45-218.

1. Cannot remove a record without written permission of the custodian
2. Can inspect during regular office hours and during any established additional hours.
 - a. If the agency does not have regular office hours it shall establish reasonable hours when persons may inspect records
 1. Agency may require notification of desire to inspect. Notice shall not be required to be in writing or to be given more than 24 hours in advance.
3. The request shall be acted upon as soon as possible, but not later than the end of the third business day following the date the request was received
 - a. If access is not granted immediately, must be given a detailed explanation for the delay
 - b. If the request is denied, a written statement of the legal grounds for the denial shall be given upon request.
4. Access may be denied if the request places an unreasonable burden in producing the record or is intended to disrupt the agency.
CAUTION - this provision should be used only in extreme circumstances.
5. Agency may require payment in advance
6. KORA neither requires nor prohibits requests made by mail or telephone

B. Copies of Records. K.S.A. 45-219.

1. Any person may make abstracts or obtain copies of a public record.
2. Public agency may require a written request
3. Public agency not required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations unless the items were shown or played to a public meeting

4. Computerized public information must be provided in the form requested if the public agency has the capability of producing that form. The agency is not required to acquire or design a special program to produce information in a desired form, but has discretion to allow an individual who requests such information to design or provide a computer program to obtain the information in the desired form. AG Opins. No. 89-106; 87-137.
 - a. Must provide computerized voter registration list in computer format if the public agency has the capability of providing the record in that format. AG Opin. No. 88-152.
 - b. Computer tapes containing data from claim forms were declared "official public records" within purview of the former records statute/ predecessor to the KORA. State ex rel. Stephan v. Harder, 230 Kan. 573 (1982).
5. Agency may prescribe reasonable fees:
 - a. Fees for copies shall not exceed the actual cost, including the cost of staff time
 1. 20 cents per page fee charged by a school district was not unreasonable as it reflected actual costs. AG Opin. No. 87-4
 - b. If records are maintained on computers, fees shall include the cost of any computer services, including staff time
 - c. The agency must provide, upon request, the schedule of fees
- C. Procedures for obtaining access to or copies of records. K.S.A. 45-220.
 1. Each public agency to adopt procedures to be followed. Use the same procedure for all requests.
 2. May require the request to be written and proof of the requestor's identity.
 3. May require written certification that the requester has a right to the records and that the requester will not use names obtained from the records to solicit those persons whose names are contained in the list.
 4. K.S.A. 45-217 and 45-220 permit the official custodian to designate other

persons to carry out custodial duties. AG Opin. No. 90-89.

IV. Exceptions

- A. Some records are closed by federal law, state statute, Supreme Court Rule. These types of public records are closed. Examples:
1. Child abuse records and reports, K.S.A. 38-1507.
 2. Juvenile offense records, K.S.A. 38-1607; 38-1608(c) - conf. info. on victim.
 3. Individually identifiable drug abuse treatment records, K.S.A. 65-4608; K.S.A. 45-221(a)(3).
 4. Financial info. of an identifiable taxpayer filed with the county appraiser, K.S.A. 45-221(b).
 5. Criminal history record information, K.S.A. 1992Supp. 22-4701 et seq.; 22-4707; K.A.R. 10-12-1; 10-12-2.
 6. Ballots, K.S.A. 25-2422; K.S.A. 25-2708; 25-3008.
 7. Unexecuted search or arrest warrants, K.S.A. 21-3827, K.S.A. 1993 Supp. 22-2502(c); AG Opin. No. 87-100.
 8. Presentence reports, K.S.A. 1993 Supp. 21-4605.
 9. Grand jury proceeding records, K.S.A. 22-3012.
 10. Adult authority preparole report and supervision history, K.S.A. 1993 Supp. 22-3711.
 11. Mentally ill persons' commitment and treatment records, K.S.A. 1993 Supp. 59-212; 59-2931, K.S.A. 59-2941.
 12. Long-term care facility residents' information confidential, K.S.A. 1993 Supp. 75-5921.
 13. Peer review records - privileged, K.S.A. 65-4915(b).
 14. Adoptions, K.S.A. 1993 Supp. 59-212; 59-214; 59-2122; K.S.A. 65-2423.
 15. Income tax reports and returns, K.S.A. 1993 Supp. 79-3234(b).

16. Racing Commission - KBI background check confidential, K.S.A. 1993 Supp. 74-8804(o).
 17. KDHE vital statistics - marriage, birth and death certificates, K.S.A. 65-2422
 18. KCR may not disclose investigation info. without consent, K.S.A. 44-1005.
 19. Crime victim compensation board, all records and info. given to board confidential, K.S.A. 1993 Supp. 74-7308(c).
 20. Diversion agreement once completed, K.S.A. 1993 Supp. 22-2911.
 21. Disclosure of social security numbers, see 5 U.S.C. § 552a note.
 22. Certain student information or educational records, 20 U.S.C. § 1232g.
- B. K.S.A. 45-221(a)(2-38) lists public records that are not required to be disclosed. The public agency has discretion whether to make these records available for inspection. Custodian of records makes discretionary decision concerning disclosure policy. AG Opin. No. 89-107. However, the burden of showing that a record fits within an exception rests with the party intending to prevent disclosure. Topeka v. Stauffer, 7 Kan.App.2d 353 (1982). (Note: case under former records law).

These 42 discretionary types of records include:

1. Personnel records, performance ratings, or individually identifiable records pertaining to employees or applicants for employment in public agencies. K.S.A. 45-221(a)(4). AG Opin. No. 91-127.
 - a. However, the "names, positions, salaries and lengths of service" of public officers and employees must be made public. K.S.A. 45-221(a)(4); AG Opin. No. 88-61; 91-50 (salary deduction not open); 92-132 (pension plan part of salaries).
 - b. A directory containing the names and addresses of teachers taken from personnel files is a public record subject to disclosure. AG Opin. No. 89-106. But see AG Opin. No. 90-136. (There has been a recent request for the A.G. to review these prior opinions.)
 - c. For purposes of the KOMA (Kansas Open Meetings Act), independent contractors are not personnel. AG Opin. No. 87-169. Personnel are employees of public agencies. AG Opin. No. 87-10.

2. Criminal investigation records. Defined at K.S.A. 45-217(b).

a. May be ordered disclosed by district court in an action if person requesting the record shows there is:

- 1) a public interest in disclosing the records, and
- 2) that the records contain information which would promote the public interest.

The records would still be closed, however, if the law enforcement agency shows any of the following:

- 1) would interfere with a prospective law enforcement action ,
- 2) reveal the identity of a confidential informant,
- 3) would reveal confidential investigation techniques,
- 4) would endanger the life or physical safety of any person, or
- 5) would not reveal the identity of a victim of a sexual offense.

K.S.A. 45-221 Supp. (a)(10)(A)-(E). Harris Enterprises, Inc. v. Moore, 241 Kan. 59 (1987).

b. Charges filed against a person and the scheduled court dates are public information. AG Opin. No. 87-145.

c. Roster of jail inmates and the front page of a standard offense report are public records, mug shots are not. AG Opin. No. 87-25.

d. A log of breath test machine results is a criminal investigation record. AG Opin. No. 87-63.

e. Coroner reports are subject to disclosure unless they have been filed with the clerk of the district court and designated as a criminal investigation record. AG. Opin. No. 86-5 and K.S.A. 22a-232. Autopsy reports are exempt from disclosure if they constitute criminal investigation records. (AG letter opinion dated 10-5-89).

3. Notes, preliminary drafts, research data in the process of analysis, memoranda. This exception does not apply when such records are

cited or identified in a public meeting. K.S.A. 45-221(a)(20). AG Opin. No. 90-14. See also K.S.A. 45-221(a)(21) and (22); records of public agency having legislative powers. AG Opin. No. 90-92.

4. Library patron and circulation records which pertain to identifiable individuals. K.S.A. 45-221(a)(23). Library archive and museum materials contributed by private parties may be closed to the extent that the donor conditioned the contribution upon such limitations. K.S.A. 45-221(a)(7).
 5. Attorney work product. K.S.A. 45-221(a)(25).
 6. Public records containing information of a personal nature when public disclosure would constitute a clearly unwarranted invasion of personal privacy. K.S.A. 45-221(a)(30). AG Opin. No. 92-149 (victim of sexual offense).
 7. Records concerning prospective location of a business or industry where no previous disclosure has been made. K.S.A. 1995 Supp. 45-221(a)(31).
 8. Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure. K.S.A. 1995 Supp. 45-221(a)(2). (Question: does litigation actually have to be pending?)
 9. Medical, psychiatric, psychological, alcohol or drug treatment records which pertain to identifiable individuals. K.S.A. 1995 Supp. 45-221(a)(3)
- C. Contractual provision attempting to close certain terms is void as against public policy, provided no other closure exemptions apply. AG Opin. No. 91-116; 93-55.
- D. If a public record contains material not subject to disclosure, that portion of the record must be deleted and the record made available. Tew v. Topeka Police & Fire Civ. Serv. Comm'n, 237 Kan. 96 (1985); State ex rel. Stephan v. Harder, 230 Kan. 573 (1982); K.S.A. 45-221(d).
- E. Unless otherwise required by law, a taxpayer's financial information required or requested by a county appraiser to determine property value for ad valorem taxation shall not be disclosed. K.S.A. 45-221(b). AG Opin. No. 89-118.
- F. Statistical information not descriptive of any identifiable person is subject to disclosure. K.S.A. 45-221(e).

V. Enforcement of the Act

A. District court has jurisdiction. K.S.A. 45-222.

1. Any person, the attorney general, or a county or district attorney, may make application
2. District court may order injunction or mandamus
3. The court may award attorney fees
4. Such actions to be given precedence

B. Neither the public agency nor any officer or employee shall be liable for damage for failure to disclose a record. K.S.A. 45-223.