

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Carlos Mayans at 3:30 p.m on February 3, 2000 in Room 519-S of the State Capitol.

All members were present except: Representative David Huff, excused

Committee staff present: Michael Heim, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Lisa Montgomery, Office of the Revisor of Statutes
Lois Hedrick, Committee Secretary

Conferees appearing before the committee:

Daniel Hermes, Government Relations Director, Office of the Governor
Representative Douglas Johnston
Vernon Keel, President, Kansas Sunshine Coalition for Open Government
John Lewis, President-Elect, Kansas Sunshine Coalition for Open Government
Mike Taylor, Government Relations Director, City of Wichita
Kelly Kultala, Lobbyist, City of Overland Park
Randall Allen, Executive Director, Kansas Association of Counties
Rebecca Bossemeyer, County Clerk, Geary County
Don Moler, Executive Director, League of Kansas Municipalities
David Furnas, Executive Director, Kansas Press Association
Harriet Lange, Kansas Association of Broadcasters
Gary McNair, Legislative Chair, Kansas Association of Broadcasters
(Written Testimony) Jeffery Bottenberg, Legislatiave Counsel,
Kansas Sheriff's Association

Others attending: Guest List (See Attachment 1)

Chairperson Mayans stated several bills have been or soon will be introduced in this Legislature on the issue of Open Records and Open Meetings, and it is the intention of the committee to study and hold hearings about those bills with the goal of determining if amendments to the statutes are necessary. He then introduced Mike Heim, Committee Researcher.

Mr. Heim distributed a copy of the Kansas Open Records Act, K.S.A. 45-215 et seq. and a copy of K.S.A. 21-3914 listing the crimes and punishments affecting unlawful use of public records. (A copy of the statutes may be obtained through local public libraries or the Internet.) Mr. Heim reminded that the right to such records is not a constitutional right; that each state establishes its own law; and, regardless of state law, there are instances where federal law rules.

The Chair noted that one of the bills to be considered will be the Governor's and Attorney General's proposal to establish an independent Public Assistance Officer and make other amendments to current law. Daniel Hermes, Office of the Governor, and Steve Phillips, Assistant Attorney General, in turn, presented testimony relating to the proposal to strengthen laws relating to open records and open meetings. Mr. Phillips noted the Attorney General reconvened her 1996 Task Force, in reaction to news media stories about problems of citizens acquiring access to open records, and it recommended changes described in his written testimony. Both testimonies are attached: Mr. Hermes, Attachment 2, and Mr. Phillips, Attachment 3.

The Chair asked Mr. Phillips if it was envisioned that the Public Assistance Officer would hold hearings and have outcomes in a timely manner. His response was that the anticipated minimum time would be ten days; and that overall the goal is to shorten the time the court process entails. He noted that it is impossible to estimate the workload if the office is established. Last year, he fielded over 600 telephone calls on the subject; roughly one-fourth being about access to records. He agreed that public education is needed and that the current law includes too many exceptions to accessible records.

CONTINUATION SHEET

Representative Douglas Johnston presented testimony to alert members to two bills he has introduced: (1) to require publication of the names of parolees who commit crimes while on parole; and (2) to require the Legislature every five years to reaffirm the exceptions to the Kansas Open Records Act. He stated his belief and that of several attorneys, that the exceptions established by the Kansas Department of Corrections and the Kansas Department of Transportation are inaccurate in their interpretations of federal law and they should be reviewed. (See testimony, [Attachment 4](#).)

Vernon Keel, President of the Kansas Sunshine Coalition for Open Government and Wichita State Professor of Common Law, presented testimony regarding open records and open meetings. He stated the statutes make it difficult for citizens and government personnel to know what records are legally open and available. His written testimony lists the Coalition's issues of concern relating to exemptions, enforcement, and penalties of the law (see [Attachment 5](#)). Mr. Keel expressed the opinion he did not believe a Public Assistance Officer is needed. "Indiana has a public access counselor, with a budget of some \$158,000 a year." He stated "it would be appropriate to identify someone in the Attorney General's Office to respond to citizen complaints; not a separate officer."

John Lewis, publisher of two weekly newspapers and President-Elect of the Kansas Sunshine Coalition for Open Government, endorsed Mr. Keel's testimony and offered suggestions to legislators to consider in their deliberations. (See [Attachment 6](#).) Mr. Heim asked him if he favored the suggested separate Public Assistance Officer, rulings and appeal process. Mr. Lewis responded he is not sufficiently knowledgeable about the process to respond.

Mike Taylor, Government Relations Director, City of Wichita, citing his past experience as a Wichita journalist and experience in his present position, expressed the opinion that (1) education about the law to make it understandable to government employees, journalists, and the public is worthwhile; (2) the Kansas Press Association, Association of Broadcasters, and other groups should join to foster better understanding of the law; and (3) legislators should be cautious of establishing new penalties and more bureaucracy. (See testimony, [Attachment 7](#).)

Kelly Kultala, Lobbyist for the City of Overland Park, testified that the city supports the Open Records Act in its current form and rejects additional regulation as being unnecessary. (See testimony, [Attachment 8](#).)

Randy Allen, Executive Director, Kansas Association of Counties, affirmed the message of education and endorsed the idea to have concerned organizations work together to develop a state-wide educational program. He stated the idea of a poster in appropriate offices resonated with him and offered to share the expense with the League of Kansas municipalities. (See testimony, [Attachment 9](#).)

Rebecca Bossemeyer, Geary County Clerk and Chair of the Legislative Committee of the County Clerk's Association, testified some recommended changes are overly aggressive and urged caution in creating any new positions in state government. She recommended the fees set for collecting copies be left to the discretion of the local municipalities. (See written testimony [Attachment 10](#).)

Don Moler, Executive Director, League of Kansas Municipalities, testified (1) the League actively trains its members on the requirements of KORA and KOMA and is willing to cooperate to expand education to state and local officials who maintain public records; (2) the League does not believe in the creation of positions in the Secretary of State's office to render and enforce opinions on disputes regarding open records requests; (3) that the Attorney General be provided authority to render binding agreements on open records disputes; and (4) impose fee limitations for copying records. (See written testimony, [Attachment 11](#).)

David Furnas, Executive Director, Kansas Press Association, offered testimony on the Association's concerns (see [Attachment 12](#) concurring with (1) the structured review of existing exemptions to open records; (2) the designation of an office or individual to administer the law; and (3) setting a fee limit for copies of records. The Chair asked if he favored a new Public Assistance Officer and Mr. Furnas replied the Association believes it is necessary to designate an officer or someone to coordinate the administration of the law and it seems logical that it be in the Attorney General's office. He also stated a sunset on

CONTINUATION SHEET

periodic review of the exemptions is needed.

The Chair referred committee members to the written testimony of Jeffery Bottenberg, Legislation Counsel to the Kansas Sheriff's Association (see Attachment 13) in which he referenced the experiences of several Sheriff's with respect to requests for accident and crime information. He also indicated support for general education; and opposition to the proposal for civil and criminal penalties on individual employees.

Harriet Lange, Kansas Association of Broadcasters, introduced Gary McNair, the association's Legislative Chair. Mr. McNair, in his written testimony (Attachment 14), endorsed the Florida law's guidelines for costs of duplicating records; and presented specific recommendations on attorney fees, penalties for violations, sunseting exemptions, and the fees agencies may charge.

There being no others present to testify, Chairperson Mayans stated the committee will continue its discussion of the issues at next Tuesday's meeting. Also, he indicated there probably will be more legislation on the subject assigned to the committee by that time.

The Chair asked Research staff to chart the various recommended proposals for committee study next week, to include differences of proposals and estimated costs where applicable.

The Chair asked Mr. Keel if he believes it would be a good thing to eliminate all the exemptions in current statutes. Mr. Keel replied that nothing is absolute; however, the Coalition supports a sunset provision where exemptions would be reviewed (like that required by Florida's law). He said he believed there were far too many exemptions; especially as they make interpretation of the law more difficult. The Chair offered Mr. Keel the opportunity to provide him with a list of exemptions that the Coalition believes should be removed and any other changes they recommend.

The Chair announced the Committee will meet next Tuesday, February 8, 2000, to continue the hearing on open record issues; and on Thursday, February 10, the committee will begin development of its recommendations on the proposals. The following week it will continue development of the issue and perhaps finalize its decisions.

The meeting adjourned at 5:35 p.m., February 3, 2000.

HOUSE COMMITTEE ON LOCAL GOVERNMENT
GUEST LIST
FEBRUARY 3, 2000

[PLEASE PRINT]

NAME	REPRESENTING
Douglas Johnston	House Dist 92
Randy Allen	KAC
Mike Taylor	city of Wichita
Nancy Lindberg	AG
Bita NOH	
Jason Crowe	AMT/KMA
JAN CAVALIERI	Div. of Personnel
Julene Miller	AG.
Steve Phillips	A.G.
Mary Tritsch	AG
Melissa Wangemann	Sec. of State
John Pinegar	City of Topeka
Reid Stacey	
Rebecca Bossemeyer	COUNTY CLERK
Kara Fator	Johnson County

**HOUSE COMMITTEE ON LOCAL GOVERNMENT
GUEST LIST
FEBRUARY 3, 2000**

[PLEASE PRINT]

NAME	REPRESENTING
Don Moler	LKM
Kelly Huotala	City of Overland Park
Derrin Keel	KS Coalition for Open Govt
Blaine Finch	City of Ottawa
Grace Bousler	City of Mayetta
Alice Riley	City of Auburn
Harriet Lange	Kan. Assn. of Broadcasters
Gary McFain	Kansas Association Broadcasters
Rhonda Humble	GARDNER NEWS
Dick Bauman	KDCT
DAVID FURNAS	Ks PRESS
Kim Gulley	LKM
Sakum	Sen. Ripston - Intern

**HOUSE COMMITTEE ON LOCAL GOVERNMENT
GUEST LIST
FEBRUARY 3, 2000**

[PLEASE PRINT]

NAME	REPRESENTING
Don Seifert	City of Olathe
Don Hermes	Gov

**HOUSE COMMITTEE ON LOCAL GOVERNMENT
GUEST LIST
FEBRUARY 3, 2000**

[PLEASE PRINT]

NAME	REPRESENTING
<i>Dale Bell</i>	<i>City of Emporia</i>
<i>Alvin Emmon</i>	<i>City of Emporia</i>

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OFFICE OF THE GOVERNOR LEGISLATIVE TESTIMONY

TO: Chairman Carlos Mayans and Members of the House Committee on Local Government

FROM: Dan Hermes, Director of Governmental Affairs

DATE: February 3, 2000

SUBJECT: Open Records and Meetings

Mr. Chairman and members of the committee, thank you for the opportunity to appear today to visit about changes the Governor and Attorney General are recommending to strengthen the open records and open meeting laws for the state. The committee approved the introduction of a bill to accomplish Governor Graves and General Stovall's objectives last week.

As this hearing is not on this specific measure but on the issue of open records, my testimony today will be brief and will express the goals that the Governor would like to see accomplished this session to ensure access to government proceedings for citizens of our state.

Perhaps nothing contributes to more accountable government than ensuring this access. The Governor believes that we have strong open government laws but the mechanism to enforce the laws can be approved. As he said in his state of the state address, "The goals we need to achieve are clear – an accessible and affordable independent review for disputes; teeth in the enforcement process; and a method to assure only the true costs are charged for providing records to citizens."

The measure introduced by this committee meets these goals, establishing a public access officer to resolve disputes, giving this officer the ability to levy fines and allowing the officer to review costs charged for open records. The bill would also enhance public awareness of the laws we have in Kansas by developing signs for display in places where open meetings occur and access to public records exists.

I appreciate the committee's interest in this issue. In a democracy, few issues are more important than every citizens right to the records and proceedings of their government. I would be happy to stand for questions.



State of Kansas

Office of the Attorney General

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CARLA J. STOVALL

ATTORNEY GENERAL

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My name is Steve Phillips. I'm an assistant attorney general, appearing on behalf of Attorney General Carla Stovall.

In response to a series of newspaper articles about problems private citizens would have in obtaining access to open records, Attorney General Stovall reconvened a task force that she originally created in 1996 called Citizens for Brighter Sunshine, or CBS for short. And yes, Attorney General Stovall does like acronyms.

The purpose of CBS was to listen to recommendations the news media had for improving public access to government records and meetings. CBS made the following recommendations:

- 1) That there be fines personally against a government official who refuses to disclose records, knowing that they are open.
- 2) That custodians of records be required to post a short statement of the public's rights under the Kansas Open Records Act.
- 3) That the initial adjudication of both the KORA and the KOMA complaints be moved from the courts to an independent administrative hearing officer, and that the officer's decisions should be published on the Internet.
- 4) That the independent administrative hearing officer have authority to implement administratively rules and regulations interpreting the KORA and the KOMA, including authority to define limits on costs of obtaining copies of records.

Attorney General Stovall believes these principles would be important advancements in helping the public obtain access to information. In cooperation with Governor Bill Graves, she drafted a bill which incorporates these principles. That is the bill General Stovall and Governor Graves jointly introduced to this committee last week. As I understand it, the revisor's office has not yet completed its work on that bill so it is not currently before the committee. I have attached a copy of the draft legislation that we forwarded to the revisor's office.

We agree with CBS that moving adjudication of complaints from the judicial process to an administrative quasi-judicial process offers significant benefits to the public and to governmental entities in savings of time and money. Administrative hearings are much more user friendly than

are court hearings, and are less time consuming.

We believe that publishing the hearing officer's decisions on the Internet, coupled with the officer's authority to implement interpretative rules and regulations, will offer interpretations of the law that will carry some legal weight on appeal, and will thereby offer some certainty to the KORA and the KOMA, which now contain many ambiguities. Again, we believe this would be of benefit to both the public and governmental entities.

In moving the adjudication of complaints about open government to the administrative process, we believe there are, however, several principles that would be essential in any legislation. While the administrative process is a much quicker, user friendly way of adjudicating disputes, it needs to be a fair process. The hearing officer needs to have authority to exercise his or her decision making authority independently. Out of fundamental fairness, the administrative decision making process needs to incorporate principles of due process. Finally, there needs to be a right to appeal the decision.

Our office looks forward to working with this committee. We recognize there are many ways to achieve the goals of furthering open government, and we hope that our suggestions can be of assistance to the committee as it considers these difficult and important issues.

NEW STATUTE

(a) There is hereby established in the office of the attorney general the position of public access officer who shall be appointed by the attorney general with compensation fixed by the attorney general.

(1) The public access officer shall hear complaints of alleged violations of the Kansas open meetings act, K.S.A. 75-4317 *et seq.*, and amendments thereto, and the Kansas open records act, K.S.A. 45-215 *et seq.*, and amendments thereto, and issue orders pertaining to the same.

(2) The public access officer shall have authority to promulgate rules and regulations to carry out the provisions of the Kansas open records act and the Kansas open meetings act, including authority to determine what constitutes reasonable fees for copies of open public records pursuant to K.S.A. 45-219, and amendments thereto.

(3) The public access officer may, in that officer's discretion, issue nonbinding advisory opinions at the request of any person. A governmental agency's or body's compliance with a nonbinding advisory opinion shall preclude fines or attorneys fees in any proceeding before the officer or in any subsequent appeal.

(4) The public access officer shall cause to be published on the Internet and otherwise the officer's decisions, orders, and related materials.

(b) Proceedings before the public access officer for fines/penalties or voiding of binding action shall be brought only by an assistant or deputy attorney general who is under a separate line of direct supervision from the public access officer, or by any county or district attorney.

(c) Proceedings before the public access officer seeking a determination that records must be disclosed, but not seeking fines or voiding of binding action, may be brought by any person.

(d) In investigating alleged violations of the Kansas open meetings act or Kansas open records act, the assistant or deputy attorney general, or any county or district attorney may:

(1) Subpoena witnesses, evidence, documents, or other matter;

(2) take testimony under oath;

(3) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violations;

(4) require attendance during such examination of documentary material and take testimony under oath or acknowledgment in respect of any such documentary material; and

(5) serve interrogatories.

(e) Hearings before the public access officer shall be conducted in accordance with the provisions of the Kansas administrative procedure act and are subject to review and enforcement in accordance with the act for judicial review and civil enforcement of agency actions. A decision by the public access officer shall be considered final agency action; appeals of such decisions shall be made to the district court in accordance with the act for judicial review and civil enforcement of agency action, and not to the attorney general.

(f) In any action concerning records, the public access officer may review the records *in camera*, and the records shall not be subject to disclosure or open to public inspection unless the officer finds them to be open and the time for appeal has run.

NEW KORA STATUTE

(a) An official custodian for public information shall prominently display a sign in the form prescribed by the public access officer that contains basic information about the rights of a requestor, the responsibilities of a governmental body, and the procedures for inspecting or obtaining a copy of public information under this chapter. The official custodian shall display the sign at one or more places in the administrative offices of the governmental body where it is plainly visible to:

- (1) members of the public who request public information in person under this chapter; and
- (2) employees of the governmental body whose duties include receiving or responding to requests under this chapter.

(b) The public access officer shall, by rule and regulation, prescribe the content of the sign and the size, shape, and other physical characteristics of the sign. In prescribing the content of the sign, the officer shall include plainly written basic information about the rights of a requestor, the responsibilities of a governmental body, and the procedures for inspecting or obtaining a copy of public information under this chapter that, in the opinion of the officer, is most useful for requesters to know and for employees of governmental bodies who receive or respond to requests for public information to know.

NEW KOMA STATUTE

(a) All bodies and agencies subject to this act shall prominently display at all meetings a sign in the form prescribed by the public access officer that contains basic information about the rights of the public under the act and the responsibilities of the body or agency, and the procedures for requesting notice of public meetings.

(b) The public access officer shall, by rule and regulation, prescribe the content of the sign and the size, shape, and other physical characteristics of the sign. In prescribing the content of the sign, the officer shall include plainly written basic information about the rights of the public under the act and the responsibility of the body or agency that, in the opinion of the officer, is most useful for requesters to know and for members of bodies or agencies who are subject to the act to know.

AMENDED KORA STATUTE

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 public access officer may award attorney fees to the plaintiff, **including the office of the attorney general or any county or district attorney**, if the court officer 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 officer determines to be responsible for the violation. **Additionally, the public access officer may award a civil penalty not to exceed five hundred dollars (\$500) against the official custodian, personally, or any public employee or officer over the custodian, who with malice failed to disclose or ordered the custodian to fail to disclose records, knowing that they are open.**

(d) In any action hereunder in which the defendant is the prevailing party, the court officer may award to the defendant attorney fees if the court officer 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.~~

Amended KOMA statutes:

75-4320. Penalties.

(a) Any member of a body or agency subject to this act who knowingly violates any of the

provisions of this act or who intentionally fails to furnish information as required by subsection (b) of K.S.A. 75-4318 shall be liable for the payment of a civil penalty in an action brought **before the public access officer** by the attorney general or county or district attorney, in a sum ~~set by the court~~ of not to exceed five hundred dollars (\$500) for each violation. In addition, any binding action which is taken at a meeting not in substantial compliance with the provisions of this act shall be voidable in any action brought by the attorney general or county or district attorney ~~in the district court of the county in which the meeting was held~~ **before the public access officer** within ~~ten (10) days~~ **one month** of the meeting, ~~and any the court shall have jurisdiction to issue injunctions or writs of mandamus to enforce the provisions of this act.~~

(b) Civil penalties sued for and recovered hereunder by the attorney general shall be paid into the state general fund. Civil penalties sued for and recovered hereunder by a county or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

DOUGLAS JOHNSTON

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State of Kansas



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MEMBER: TAXATION
TRANSPORTATION
ENVIRONMENT
GOVERNMENTAL ORGANIZATIONS
AND ELECTIONS
ADMINISTRATIVE RULES AND
REGULATIONS

House of Representatives

February 3, 2000

HEARING: HOUSE COMMITTEE ON LOCAL GOVERNMENT

TESTIMONY FROM: STATE REPRESENTATIVE DOUGLAS JOHNSTON

SUBJECT: HEARING ON PUBLIC RECORDS ISSUES

Thank you for this opportunity to testify on the issue of public records law in Kansas. I have introduced two bills regarding the public records issue that I hope you will seriously consider.

The first bill would make public the names of parolees who commit crimes while on parole. Currently, the Department of Corrections says such information is not a matter of public record.

The public should have the right to know the names of parolees who, while on parole, commit crimes. No bureaucratic excuses from the DOC should be accepted on this issue. This is a fundamental issue of public safety and public oversight of the administrative branch bureaucracy by the public, the media and the Legislature.

The attached documents should provide you with some background on this issue.

The second bill would require the Kansas Legislature to review and affirm or eliminate the exceptions to Kansas open records law every five years. That is the proposal in the legislation I introduced in the House Committee on Governmental Organizations and Elections.

This bill would sunset the exemptions in the Kansas open records law each five years. This would force the legislature to approve the exceptions to the law or allow them to be eliminated.

The purpose of the legislation is to force the legislature to determine whether or not the 40 exceptions to the Kansas Open Records Act are really necessary. Times change, the membership of the Legislature changes and so does the political environment. A thorough review of the exceptions to the Kansas Open Records Act on a periodic basis would go a long way toward ensuring good public policy, protecting the rights of citizens, and building confidence in state government.

HOUSE LOCAL GOVERNMENT

2-3-00

Attachment 4

For reference, I include the following article by Ned Seaton of the Manhattan Mercury newspaper. His article deals specifically with this issue. Thank you for your time attention to these issues.

Respectfully submitted,
Rep. Douglas Johnston, District 92 (Wichita)

Give Kansans greater access to government
BY Ned Seaton
General Manager
Manhattan Mercury

Right now, Manhattan city officials could be writing back and forth to one another about proposals to build an indoor pool here. Riley County officials could be shuffling memos back and forth about what to do about your tax rate. School board members could be discussing - in writing - whether evolution ought to continue to be taught in local public schools. But you would never know. Kansas law keeps those records secret. It shouldn't be so. Kansas law dealing with public records has become too full of holes.

Prodded by a series of stories published in this newspaper and others last year, legislators in Topeka this year will deal with proposals designed to enforce the current public records law; that's a good first step. But I'd contend that, to conduct the kind of open government that Kansas citizens deserve, the state needs to open the law further. Kansas ought to be a model of open government; it should let citizens see clearly what their elected and appointed officials are up to. It makes for better government and ultimately, a better state. To do that, Kansas needs a model law on public records. At the moment, the model law is probably Florida's. While there are other issues in the Kansas law that need to be fixed, let me propose three as a starting point, drawing on Florida's law as a reasonable basis for comparison: *Let's get rid of the loophole that allows the government to keep secret the records dealing with proposed policies or government actions.

While the state declares that government records are generally supposed to be open to the public, the law has an exemption for records pertaining to "proposed legislation or amendments to proposed legislation." It also exempts "research prepared for one or more members (of a public agency)" and "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..."

Whew. Read that list over again. What it's saying is that the records about things the government is thinking about doing are not available to the public. What that means is that the workings of government are kept secret precisely when they could benefit from some public discussion. It's when things are in the works that people need to know about them.

Citizens often feel shut out from the workings of government and complain that by the time they got involved, decisions had already been made. This is part of the reason why. Florida's law, by the way, contains no such exemption. Basically, anything a government official writes down on a piece of paper is a public record. It makes for a more informed public. *Criminal investigation files ought to be opened to the public once a case is declared to be closed. This is the way the Florida law works. In Kansas, those files are kept secret forever. Under that law, it's difficult for the public to judge the performance of the police and to get a fuller picture of the story behind certain crimes.

As a reporter, I once wrote a story in Florida about how the Clearwater Police Department kept major criminal investigative files about the Church of Scientology. That story led to a public discussion about the appropriateness of such an investigation and contributed to the public's knowledge about both organizations. What if the local police were keeping a file on you? You'd never know it here.

Similarly, we can never know whether the county property appraiser is doing a fair job of setting values for our homes. As homeowners know, the appraiser plays a huge role in determining how much property taxes we'll pay. In Florida, the selling price of homes is a matter of public record. That enables people to learn what comparable homes have sold for and whether the appraiser is doing his job. Furthermore, they can find out before they buy a house how much the last buyer paid for it. In Kansas, that's not possible unless you've got a real estate license. That's not the way it should be. * Finally, Florida requires that the Legislature review all exemptions to the public records law every five years.

If the Legislature fails to make an affirmative declaration that the exemption serves a useful public purpose - and those are specifically defined - then the exemption dies and the record is made public.

That demonstrates a real commitment to open government.

Kansas would do well to make the same commitment.

Date: _____

Jun. 11-28-99

- () Topeka Capital Journal
- () Wichita Eagle
- () Kansas City Star
- () Chanute Tribune
- () Dodge City Daily Globe
- () Emporia Gazette

- () Hays Daily News
- () Hutchinson News
- () Iola Register
- () Johnson County Sun
- () Kansas City Kansan
- () Lawrence Journal World

- () Manhattan Mercury
- () Olathe Daily News
- () Parsons Sun
- () Pittsburg Morning Sun
- () Salina Journal
- () Winfield Daily Courier

EDITORIALS

'Self-critical analysis'

State officials have started asserting an unusual privilege when they deny open-records requests.

They use the phrase when they refuse to release information contained in open public records. They call it "self-critical analysis."

Charles Simmons, secretary of the Department of Corrections, used it when he rejected an open-records request filed by The Wichita Eagle for the names of parolees charged with violent crimes.

Dean Carlson, secretary of the Department of Transportation, used it when he rejected an open-records request filed by The Garden City Telegram for safety ratings on railway crossings in southwest Kansas.

After Simmons explained his department's position on the request for parolee information and repeated the claim of a privilege in a letter published last Sunday, The Hutchinson News asked for an explanation of the terminology.

Timothy G. Madden, the department's chief legal counsel, wrote that the department uses that term in its internal policies and procedures to refer to a process he employs to provide legal advice to the secretary.

"This requires a review by legal counsel of situations that may give rise to litigation including employee disciplinary action," Madden said. "The self-critical analysis permits the secretary to take appropriate action relative to litigation, the disci-

pline of employees, and the modification of policies or operation of the department."

The officials have a responsibility to analyze and improve their agencies' operations. Some of those efforts, undoubtedly, involve consultations with legal counsel.

But by stating it in the way they have, and by using it to deny access to open public records, they abuse their authority. They use it as a blanket response to contend that their right to run a state agency without interference from a concerned public supersedes the public's right to information about how the state agency performs its job.

If "self-critical analysis" exists as a privilege, it applies only to a limited number of situations. The privilege does not extend to cover modifying a department's policies or operations. And in the case of litigation or employee discipline, it would likely evaporate in the face of an attorney's discovery motion, except when it involves items covered by an attorney-client privilege.

State officials should stop trying to stretch the authority they have to run their departments into some sort of privilege to keep information secret. Instead of trying to eliminate public comment and criticism about their operations, they should invite citizens' input as part of the process of managing government agencies in an open, democratic society.

WESTERN FRONT

Open records articles of interest to all Kansans

My husband, Bill Daniels, and I read with interest the articles on the Open Records Law in the Sunday edition of your newspaper.

Our son, John R. Daniels of Lawrence, answered a service call for his employer on June 2. Returning home at noontime, he traveled on a county road detour in Franklin County. This detour took him over a railroad crossing, where his pickup was hit by a freight train traveling along the double set of tracks. John was airlifted to a Topeka hospital. He was a patient there for two weeks after surgery. After three months of recuperating at home, John returned to work in late September.

Someone from the Franklin County Sheriff's department told John that he could obtain a copy of the accident report for a \$5 fee. The first week in July, Bill and I visited the courthouse in Ottawa. We requested a copy of the accident report. The officer in charge copied the report on the front and back side of the page. We did not have to identify ourselves. He asked \$5 for the copy, which we paid in cash. Afterward, we told the officer that the report involved our son, John. We gave the copy to John for his records of the accident.

Thank you for publishing this report on the open-records laws. It involved all of Kansas, not just western Kansas.

NORMA JANE DANIELS
Dodge City

131

Date: Sun. 11-21-99

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WESTERN FRONT

**Corrections
secretary defends
his position on case**

I am responding to the editorial "Adversarial effort" published in Thursday's edition of The Hutchinson News.

As Secretary of Corrections I am committed to providing information in compliance with state law. I believe that public understanding of the department can be achieved best by providing complete and factual information. Only by continuing to operate in such a manner can the Department of Corrections maintain the degree of credibility which we have worked diligently to achieve. In fact, I proposed amendments to the Kansas Open Records Act (which were enacted) during the 1997 legislative session that significantly expanded the information regarding parolees that is accessible to the public, including supervision level, supervision violations, conditions of supervision and location of supervision.

However, I must also comply with statutes that restrict information which can be released. Statute specifically provides that the supervision history of an offender is privileged and shall not be disclosed directly or indirectly. In addition, the Criminal History Records Information Act provides that criminal justice agencies may not disseminate criminal history record information except as allowed by the act and applicable rules and regulations. The information requested by The Wichita Eagle concerns criminal charges pending in local district court, not convictions. The release of nonconviction information is restricted by the Criminal History Records Information Act.

We have provided The Wichita Eagle with substantial public information, including information on all offenders who were returned to the correctional system as parole and conditional-release violators with new felony convictions since July 1, 1994. All of the Serious Incident Review Board information requested by The Eagle was provided to and reviewed by the Legislative Post Audit Division.

I established the use of Serious Incident Review Boards several years ago. The use of such a review process is not mandated by law. However, I believe that a detailed review of our actions and practices is good public policy and responsible management of a public safety agency. I also believe that we have good faith claims that these boards are privileged by attorney-client privilege and as self-critical analysis.

I believe our position in this case complies with applicable laws. The Wichita Eagle disagrees. The court must now interpret the application of the various laws involved.

CHARLES E. SIMMONS
Secretary, Department of Corrections
Topeka

134

Date: Thurs 11-18-99

() Topeka Capital Journal
() Wichita Eagle

() Hays Daily News
() Hutchinson News

WESTERN FRONT

Tobacco monies should go for prevention

Soon the first payment from the tobacco settlement of November 1998 will arrive in Kansas. This is good news, but only if we remember the goal of the original lawsuit against Big Tobacco. That goal was to recover millions of dollars spent treating sick smokers. (Tobacco costs our state more than \$600 million each year in health costs). Unless Kansas uses settlement dollars to curb tobacco use, we will all continue to face enormous tobacco-related health costs.

The best way to fight tobacco use and reduce tobacco health-care costs is to educate potential smokers when they are young, before they start smoking. Tobacco control programs work - and we can prove it.

In 1997, Florida launched a tobacco-prevention pilot project. The result was that tobacco use among middle school students dropped by 19 percent and by 8 percent among high school students. In California and Massachusetts, monies from cigarette-tax hikes helped fund tobacco-use prevention programs. Results of that: While teen smoking increased significantly throughout the country from 1990 to 1993, smoking by teens in California and Massachusetts slowed or remained constant.

Kansas has an incredible opportunity to invest its tobacco settlement money in state and community-based programs like these. They will protect our children from the ravages of tobacco use. We need to stop the alarming trend among Kansas teens to smoke in even greater numbers.

We urge Gov. Bill Graves to submit a budget to the Kansas Legislature that calls for spending at least one-third of the settlement on community-based programs and counter-marketing efforts in tobacco-use prevention to save our children today and avert spending even more in the future for smokers' medical costs.

JUDY KELLER
executive director, American Lung Association
Topeka

EDITORIALS

Adversarial effort

Yet another Kansas newspaper requesting access to public records kept by an agency ultimately overseen by Gov. Bill Graves has had to take its case to court.

Getting facts from government agencies should not require such an expensive, adversarial effort. The Open Records Act, after all, declares openness the state policy.

Tell that to the Kansas Department of Corrections, which has denied The Wichita Eagle's requests for the identities of 22 parolees charged with murder. The newspaper last week filed a lawsuit in Shawnee County District Court against the department.

The Eagle has tried to follow up on an Aug. 19 report by the Legislative Division of Post Audit that concluded the corrections department often improperly supervised the 28 parolees whose cases it audited.

Eagle Editor Rick Thames points out that the case involves public safety: "It appears that the Department of Corrections is struggling to do a responsible job monitoring parolees. Citizens have a right to know the names and circumstances of the parolees charged, not to mention how the state is responding to that."

Corrections workers should supervise parolees through one-on-one meetings and other checks.

About one-third of the state's parolees live in Sedgwick County. At

least five killings in which parolees face charges occurred in the Wichita area.

The Eagle based its request on the state's open records law, which says information regarding a parolee's name, sentence, supervision violations, supervision level and conditions of supervision are public record. Crimes are considered a supervision violation.

The Eagle wants to review:

- Documents that identify parolees and inmates charged in murders or manslaughters in 1996, 1997, 1998 or 1999.
- Documents that contain details of the crimes in which the parolees are charged.
- Minutes of meetings of DOC Serious Incident Review Boards in which the parolees' alleged crimes are referred to.
- Notes, decisions, reports or other documents that reflect the boards' decisions or actions.

Corrections officials have said they cannot release the information because of state law on parolee privacy concerns and its own rights to attorney-client privilege and self-critical analysis.

In other words, they fear public criticism.

Corrections officials should check their egos at the door. They should share public information with the public and let the facts tell the story.

A national campaign

The Kansas Highway Patrol and other law enforcement agencies plan to crack down next week on motorists who allow children to ride in their cars, trucks and vans while not wearing a seat belt or sitting in a safety seat.

Good.

About 6,000 law enforcement agencies will join in a national campaign to bring attention to child passenger safety laws. They decided to run the campaign during Thanksgiving week because of the extra holiday traffic on roads and highways.

Col. Don Brownlee, the patrol's superintendent, said Kansas troopers will look for and ticket drivers

carrying unrestrained children in their vehicles.

In 1998, 42 children under age 16 died in Kansas highway traffic accidents. Of those, 29 were not wearing seat belts or sitting in safety seats.

State law requires children under 4 to ride in child-safety seats and children between 4 and 14 to wear seat belts.

The fine for violating the law is \$20, with another \$45 to cover district court costs.

Parents, grandparents and other relatives can easily avoid the fine and court costs. They can remember to have children buckle up or climb into the safety seat.

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Date: Mon. 11-15-99

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Wichita Eagle files suit against state

WICHITA (AP) — The Wichita Eagle has filed a lawsuit against the state requesting that it release the identities of 22 parolees charged with murder.

The lawsuit was filed Friday in Shawnee County District Court. The Eagle filed the lawsuit following an Aug. 19 report by the Legislative Division of Post Audit that concluded the Department of Corrections often improperly supervised the 28 parolees whose cases it audited.

"This is a matter of public safety," said Eagle Editor Rick Thames. "It appears that the Department of Corrections is struggling to do a responsible job monitoring parolees. Citizens have a right to know the names and circumstances of the parolees charged, not to mention how the state is responding to that."

Corrections spokesman Bill Miskell declined to comment about the suit Friday because it is a pending legal matter.

Corrections workers are responsible for supervising parolees through one-on-one meetings and other checks.

About a third of the state's parolees live in Sedgwick County. At least five killings in which parolees are charged occurred in the Wichita area.

The Eagle based its request on the state's open records law, which says information regarding a parolee's name, sentence, super-

vision violations, supervision level and conditions of supervision are public record. Crimes are considered a supervision violation.

Among the records The Eagle is seeking:

- Documents that identify parolees and inmates charged in murders or manslaughters in 1996, 1997, 1998 or 1999.
- Documents that contain details of the crimes in which the parolees are charged.
- Minutes of meetings of DOC Serious Incident Review Boards in which the parolees' alleged crimes are referred to.
- Notes, decisions, reports or other documents that reflect the boards' decisions or actions.

Corrections officials have said they cannot release the information because of state law on parolee privacy concerns and its own rights to attorney-client privilege and self-critical analysis.

The state has released some information about some parolees already convicted of crimes.

In a letter to the editor, Corrections Secretary Charles Simmons defended his agency's decision:

"I am committed to providing information in compliance with state law. I believe that public understanding of the operation of the department can be achieved best by providing complete and factual information."

18

1-10-00

Butchery

KDOT closes some safety and accident records to the public

The Kansas Department of Transportation administers multibillion-dollar highway programs. It often faces intense pressure for the dollars it hands out. It dished out some political pressure of its own in the 1999 legislative session, helping Gov. Bill Graves' administration pass the new 10-year transportation plan.

KDOT officials apparently are cracking under all this pressure. Rather than release important accident information in the cause of public safety, they are concealing it in the cause of covering their fannies.

This butchers:

- The spirit of common sense.
- Both the spirit and the letter of the Kansas Open Records Act.

Some background:

KDOT has refused to give accident and safety information to the Garden City Telegram and The Wichita Eagle, and the Lawrence Journal-World reported last month that a woman in that city has been denied information about traffic safety in her neighborhood.

After a fatal car-train accident in Finney County in 1998, the Telegram tried to get statistics from KDOT about dangerous railroad crossings in Kansas. KDOT refused and

has continued to do so; the Telegram has filed suit as a last resort.

KDOT officials say that federal law allows them to close records that could be used to blame the department for accidents. KDOT also refuses to comply with the state open records law on the grounds that accident information is research data in the process of analysis.

Mike Merriam, a Topeka-based attorney who represents the Telegram, rightly argues that almost any information could be said by government agencies to be in the process of being analyzed. And that would render countless open records closed to citizens.

This is a classic case of a public agency forgetting that its job is to serve the public, not hide behind obscure legalisms.

KDOT, in fact, is probably wrong in its interpretation of federal law. Both the Kansas Press Association and the Reporters' Committee for Freedom of the Press say that the law is not intended to keep citizens from getting information about accidents.

Regardless, KDOT's first responsibility is to promote safety, not to put it at risk by hiding important information.

— For the board, Randy Brown

Our View presents the opinions of The Eagle editorial board. It is but one part of the larger community conversation conducted every day on the editorial and Op-Ed pages. Although our editorials are written and signed by individual board members, they express the board consensus.

Editorial board members are Peter E. Pitz, publisher; Randy Brown, editorial page editor; Phillip Brownlee, Rhonda Holman and L. Kelly, editorial writers; Shannon Littlejohn, Op-Ed editor; Richard Crowson, editorial cartoonist; Angela Cato, editorial assistant; and Ann Dexter, employee representative.

KANSAS SUNSHINE COALITION FOR OPEN GOVERNMENT

1845 N. Fairmount
P.O. Box 31
Wichita, KS 67260-0031

STATEMENT TO THE HOUSE LOCAL
GOVERNMENT COMMITTEE, Feb. 3, 2000.

(316) 978-6060

Good afternoon. My name is Vernon Keel and I am president of the newly formed Kansas Sunshine Coalition for Open Government. This Coalition is a broad-based organization of individuals, businesses and organizations that share an interest in and a concern about open government at all levels in Kansas.

The Coalition was formed mainly for two reasons. The first is because too often matters related to open meetings and open records are viewed as "media" issues. While these issues certainly are important to the media, they are also issues that are extremely important to serious and responsible citizens throughout the state. The second reason for the Coalition is because of what we consider to be the continual erosion of the original spirit and intent of the open meetings and open records laws in Kansas.

In their basic form, these laws are good laws. Both clearly state that it is the public policy in Kansas that all public records and all public meetings shall be open. Furthermore, the records law also specifically states that this act shall be liberally construed and applied. Unfortunately, neither is true.

Because of too many exemptions and the lack of effective enforcement and penalties for violations, these laws have become too complicated, difficult to understand, interpret and apply, and ineffective for citizens trying to exercise their legal right of access to government.

Concerning exemptions alone, there are 44 for the open records law and 14 for the open meetings law. These exemptions not only make it difficult for citizens to understand and apply, but they make it too complicated for records clerks across the state to know for

(over)

Promoting open government in Kansas at all levels--state, county and local!

Board of Directors: Vernon Keel, Wichita, President; John Lewis, Olathe, President-elect; Randy Brown, Wichita, Secretary; Harriet Lange, Topeka, Treasurer; Les Anderson, Valley Center; Greg Bengtson, Salina; David Furnas, Topeka; Rhonda Humble, Gardner; Mike Kautsch, Lawrence; Mike Merriam, Topeka; Bryan Thompson, Salina; Jim Turpin, Wichita.

HOUSE LOCAL GOVERNMENT

2-3-00

Attachment 5

sure whether a record is legally open and available or not. Also, each exemption requires interpretation, and that is left to agency officials who have tended to err on the side of less citizen access even though the original law states that the act shall be liberally construed and applied.

The Kansas Sunshine Coalition for Open Government appreciates your interest in and concern about these issues. We want to work closely with you on these important problems. More specifically, we want to work with you:

- To reduce the number of exemptions to both laws. We are pleased that legislation has been introduced recently that would provide for a “sunset” provision on all exemptions by requiring them to be reviewed every five years, as is done in Florida and some other states;
- To develop more effective enforcement of violations of the provisions and the spirit of the open meetings and open records laws, including the identification of an individual or, as has been proposed, a special FOI Officer who would have specific responsibility in these matters;
- To provide for meaningful penalties for violations of these laws, including attorney fees and effective fines;
- To remove the burden, as currently exists in the open meetings law, for citizens to have to prove that an official denied access to government by acting “not in good faith or without reasonable basis in fact or law.” Courts have been unlikely to effect punishment for such violations unless there are repeated offenses;
- To provide time limits on responding to requests, preferably so that a citizen requesting a record leaves the office with either a copy of the record, a written explanation for when a copy of the record will be available (in a reasonable time period), or a written explanation of what exemption in the records law makes this record unavailable;
- To provide for “reasonable” copying fees or charges for unusual or electronic records, with effective punishment for unreasonable charges;
- To require tape recording of that part of a public meeting that is conducted under specific provisions of the open meetings law that allow for such executive sessions; and
- To provide educational opportunities for citizens, public officials and public employees at all levels to help them understand the provisions and operations of the open meetings and open records laws in Kansas.

We look forward to working with you on bringing about these necessary and overdue changes to recapture the original spirit and intent of the open government laws in the state.

Testimony of John Lewis
House Committee on Local Government
February 3, 2000

I am the publisher of *Kansas Lawyer* and *The Legal Record*, both weekly newspapers based in Olathe, and an officer of the Kansas Sunshine Coalition for Open Government.

In truth, it is a shame that we find ourselves here today trying to open government back up. In 1983, the Kansas Legislature threw out what was derisively referred to as the "Kansas Closed Records Act," replacing it with what became the "Kansas Open Records Act." But the openness of Kansas government has rapidly eroded with the year-by-year appending of exemptions to records that would be open.

The 1983 law that, save the exemptions, is on the books today in spirit provided for records to be open. In our coalition's recent deliberations about the various forms of legislation that are being proposed in both chambers, the assertion was often made that what is on the books now is correct and sufficient law, but it is not enforced and there are far too many exemptions that effectively reduce the Act once again to a virtual "Kansas Closed Records Act."

I believe that what citizens want and deserve is enforcement of the existing Kansas Open Records Act. What they fear is that further tinkering with the existing Act will result in overreaching and careless language that will alter the existing mostly sufficient law.

However, given the political reality that some kind of legislation is probably going to be passed this year, allow me to offer the following:

- Please be cautious that overreaching and imprecise language don't serve to actually distance citizens from their government, instead of bring them closer.
- Penalties should be provided for and enforced against records custodians who willfully violate the law. Such penalties should apply even where citizens bring civil actions, not just in actions brought by the attorney general or district attorneys.
- Some of the language in the existing bills, unwittingly perhaps, allows records custodians to delay providing records under a ruse. For example, H.B. 2722 as drafted provides for a 7-day "construction and preparation" period, at the discretion of the custodian, and a hazy potential delay tactic allowing the custodian to inform the requester as to "the earliest time and date that the record can reasonably be available." Provisions such as these will surely be abused by records custodians to withhold records from citizens who request them.
- I believe a freedom of information officer is a superfluous and costly bureaucratic addition to a function that should work properly without one. However, if political reality results in the creation of this office, I would caution that all efforts be made to ensure that this person be thoroughly independent and not controlled by any superior in state government. I am not naive, but if this is a political appointee who can be reduced to a mere puppet of the state, then the public's interest is, by definition, not represented.
- As to open meetings legislation, audiotaping of executive sessions should be required, not left to the discretion of the body, itself. I am personally familiar with situations where an individual member of a local government body sincerely believed that the body was violating the law on executive sessions, but was publicly and formally rebuked by the other members for saying so. It was the price of not being a "good ol' boy." Mandatory audiotaping protects such minority members of these boards and provides for public accountability, should it be necessary.

Thank you.

KANSAS SUNSHINE COALITION FOR OPEN GOVERNMENT

1845 N. Fairmount
P.O. Box 31
Wichita, KS 67260-0031

(316) 978-6060

February 1, 2000

KANSAS COALITION ANNOUNCES OPEN GOVERNMENT HOTLINE

Kansans who feel they are being denied their legal right of access to public records or public meetings now have somewhere to turn for information and advice.

An "Open Government Hotline" was announced recently by The Kansas Sunshine Coalition for Open Government, a non-profit educational organization formed last year to promote open government in Kansas at all levels.

According to Vernon Keel, Coalition president, individuals can phone the Hotline with specific questions about the right of access under the open meetings and open records laws in Kansas.

The Hotline number is (785) 273-7722 (this is not a toll-free number). Callers should ask for Michael Merriam, media attorney for the Coalition. There is no charge for this initial call from individuals who have specific questions about access at any level of government in Kansas.

Additional information about the Sunshine Coalition, including membership, is available on the Internet at www.sunshinecoalition.com.

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Promoting open government in Kansas at all levels--state, county and local!

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TESTIMONY

City of Wichita
Mike Taylor, Government Relations Director
455 N Main, Wichita, KS. 67202
Phone: 316-268-4351 Fax: 316-268-4519

Open Records

**Delivered February 3, 2000
to
House Local Government Committee**

I am Government Relations Director for the City of Wichita. Part of my job is to oversee public information efforts. I work with reporters and citizens to provide information about what City government. I also conduct media training for City and County employees. Before taking the job with the City, I spent nearly 20 years as a journalist covering City, County and State government. I hope I can offer some perspectives from both viewpoints.

The training I conduct for City and County employees has a simple theme: Public Information is everything we do. As public employees, we should spend our time making information about government available to citizens, letting them know what we are doing with their tax dollars and why. If you don't have anything to hide, then don't.

In the City of Wichita, I haven't seen any evidence that journalists or citizens have problems obtaining records or information. In fact, through press releases, news conferences, weekly media briefings with the City Manger, the City Webpage and the City television channel, we provide far more information than most reporters and most citizens care to know. I and my staff spend a good part of many days helping journalists and citizens track down information and get answers to their questions. In many cases its not a matter of simply responding to a request for a specific document, it's a matter of helping that journalist or citizen figure out exactly what it is they are asking for so we can help them get the information. I become their advocate, directing them to the right department or staff member, telling them what page of the budget to look at, or even creating and compiling new documents to make that information public.

I frequently find a common feeling among many public employees and journalists. The media doesn't trust government and the government doesn't trust the media. Perhaps not surprising, a great many citizens don't trust either one. Nurturing trust and openness between government and media, and ultimately with citizens, is not going to be accomplished by imposing civil penalties against a mid-level clerk earning \$22,000 a year whose biggest concern is to not do something wrong. The way to nurture trust and make sure open records laws are not violated is education about the law to make sure government employees and journalists understand it. Training by the League of Municipalities and Kansas Association of Counties and the training we do in Wichita are helping accomplish that. But I would also propose a partnership with the Kansas Press Association, the Association of Broadcasters and other journalism groups to help foster a better understanding of why open records and open meetings are important.

There is certainly room for improvement in efforts to make public information public, but from my perspective in the City of Wichita, I see no need for the kind of bureaucracy and penalties proposed in some of the open records bills being discussed.

HOUSE LOCAL GOVERNMENT
2-3-00
Attachment 7



City Hall • 8500 Santa Fe Drive
Overland Park, Kansas 66212
913/895-6000 • Fax 913/895-5003
www.opkansas.org

TO: HOUSE LOCAL GOVERNMENT COMMITTEE

RE: Amending the Kansas Open Records Act

DATE: February 3, 2000

FROM: Kelly Kultala – Lobbyist; City of Overland Park

The City of Overland Park supports the Kansas Open Records Act in its current form as the appropriate mechanism to insure open access to public records. Additional regulation offered through various legislative efforts, we believe, is unnecessary.

While the Kansas Open Records Act in most instances is straightforward in the records it requires to be made public, unfortunate instances have happened throughout the State wherein even the most basic provisions of the Act were not understood or followed. These unfortunate instances, however, point more to the need for additional training and education for specific personnel rather than a need for additional regulation and legislation.

While the outcome of a recent statewide audit reveals less than 100% compliance with the Act, we respectfully remind Committee members of the overwhelming majority of public employees and officials who respond daily to requests for public information in an expedient and accurate manner.

If there are problems in specific areas or with specific people, we suggest addressing those specific problems rather than creating an additional and costly bureaucracy that would be aimed not only at the problem few but also at the many who already are in compliance.



KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY

concerning the Kansas Open Records Law

Presented by Randy Allen, Executive Director, Kansas Association of Counties
February 3, 2000

Chairman Mayans and members of the committee, my name is Randy Allen, Executive Director of the Kansas Association of Counties. I am here today to comment on the Kansas Open Records Act (KORA) and to provide a county government perspective on its application.

Kansas counties value open government and we practice it on a daily basis. County officials are continually educated in the application of the Kansas Open Records and Open Meetings Acts. County commissioners participate in the educational opportunities of the Kansas Leadership Academy for County Commissioners, a voluntary 44-hour certification program in which commissioners receive information on all aspects of their job, including implementation and compliance with the Kansas Open Records Act. County clerks across Kansas participate in the Sanborn Institute, a certification program of the Kansas County Clerks and Election Officials Association which provides in-depth information concerning all facets of their jobs, including responses to open records requests. Kansas county treasurers, through the Kansas County Treasurers Association, have an extensive continuing education program which includes a curriculum element on effectively administering the Kansas Open Records Act. County sheriffs are informed about records issues through programs of the Kansas Law Enforcement Training Academy.

Additionally, the KAC never passes up an opportunity to include educational sessions or roundtable discussion tables about the Kansas Open Records and Open Meetings Acts when we design our annual conferences and other statewide meetings. KAC publications, such as the *Kansas County Commissioners Deskbook*, include whole sections on practical administration of the Kansas Open Records Act. And finally, similar to the services of the League of Kansas Municipalities, our staff fields questions from county officials on open records questions on a continuing basis.

Kansas and Kansans have a long-established tradition of relying upon education to advance good government and public understanding. We subscribe to the notion that the "carrot" is better than the "stick" in terms of bringing compliance with federal, state and local law. We believe that building a common understanding of the importance of open records and openness in our democratic society are more important, and infinitely more effective, than building a bureaucracy at the state level to monitor and ensure compliance with the Kansas Open Records Act. As such, we pledge to continue to improve our educational programs on the Kansas Open Records Act and other important good government laws, and we are open to your suggestions as to how we can be even more effective. If you have questions, I would be pleased to respond. Thank you.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

6206 SW 9th Terrace
Topeka, KS 66615
785•272•2585
Fax 785•272•3585
email kac@ink.org

HOUSE LOCAL GOVERNMENT
2-3-00
Attachment 9



REBECCA BOSSEMEYER
GEARY COUNTY CLERK

139 E. 8th St., PO Box 927 / Junction City, KS 66441-0927
PHONE (913) 238-3912 • FAX (913) 238-5419

TESTIMONY
Concerning Open Records
Local Government

Presented by Rebecca Bossemeyer
Geary County Clerk and Chair of Legislative Committee of Clerk's Association
February 3, 2000

I am here to express our concern about some of the proposed changes to the Open Records Act prompted by the recent "test" conducted by several media groups.

We are very proud of the 100% compliance rate, which the Kansas County Clerks had. We routinely have educational opportunities on Open Records. A member of the Attorney General's staff usually conducts the sessions.

We are concerned that some of the proposals are overly aggressive when the total compliance rate was 92%. Clearly, there are opportunities for improvement. We believe this is an educational matter, which can best be solved by our various associations.

The "test" has already had some positive outcomes in that elected officials are taking steps to educate themselves and those that work for them.

We are concerned about proposals setting the price we are able to collect for copies. Charges in clerk's offices range from 20-50 cents per page and are based on actual costs. In many counties, citizens are not charged at all if their request is for just a few pages. We believe we are in the best position to set up the fees we need to collect to provide services.

We urge you to act with caution in creating additional positions within state government. We urge you to allow us the flexibility to charge fees as needed. We urge you to not be overly aggressive in fixing these perceived problems, which can be addressed through educational opportunities.

Thank you.



League of Kansas Municipalities

To: House Local Government Committee
From: Don Moler, Executive Director
Date: February 3, 2000
Re: Discussion of Open Records Act

First I would like to thank the Committee for allowing me to appear today on behalf of the League of Kansas Municipalities to discuss issues relating to the Kansas Open Records Act. As I am sure you are all aware, the League has been involved at all stages in the development of the Kansas Open Records Act (KORA) and amendments to the KORA since its initial passage in the early 1980's. The League has also, for many years, published a manual entitled the *Kansas Open Records Act, Reference Publication for Local Government Officials*. This manual has been published by the League to help local government officials understand the intricacies of the (KORA) and to assist us in our training of local government officials in the area of open records.

I believe the League to be the single entity in Kansas which provides the most training on a year-to-year basis on the Kansas Open Records Act and Kansas Open Meetings Act. Virtually no League meeting or seminar goes by without some aspect of it being devoted to one or both of these issues. The League is very proud of its ongoing educational approach to the Kansas Open Records Act and the Kansas Open Meetings Act. Today we are here to discuss issues relating to the Kansas Open Records Act and I would like to briefly comment on some proposals which have been made in the various pieces of legislation which are now pending before the Kansas Legislature.

Currently there are suggestions relating to possible legislative actions in the following areas:

- Create a position within the Secretary of State's Office to render and enforce opinions on disputes regarding open records requests.
- Create a position within the Secretary of State's Office to render non-binding opinions to citizens on whether certain records are open under the Act.

- Provide authority for the Attorney General to render binding opinions on open records disputes.
- Subject records custodians to civil penalties for violations.
- Subject records custodians to criminal penalties for violations.
- Impose per page fee limitations of 25¢ to 50¢.

My general feeling concerning these proposals is that they are probably not necessary. The League has followed with great interest the newspaper investigation where 420 open records requests were made statewide to city, county and school officials in all counties of this great state. As we understand the numbers, there were 420 requests made and from that total group of requests there were only 35 denials listed as inappropriate by the news media. I would stress to the Committee that we do not believe that this indicates for a change in state statute. Quite frankly, by the media's own numbers, there was a 92% success rate in obtaining open records which they requested statewide. Of the 35 requests which were denied, I would point out that 29 of those came from Sheriff's departments. One would guess that most of those denials were the result of the fact that not all parts of arrest records are necessarily open and perhaps the fact that the individuals to whom those requests were made were nervous that they would hand out something that should remain closed. While we always strive for 100% accuracy and compliance with all state statutes, I would suggest that to an unbiased eye, a 92% success rate is pretty good. We certainly do not believe it suggests there is a serious problem with obtaining public records in Kansas.

What we would suggest is that it may indicate that even more education is necessary for training state and local officials who maintain public records. The League would be very happy to work in concert with the Attorney General's office and/or the Secretary of State's office to increase the amount of training available to local government officials for adequately handling open records requests. I wish to stress one more time the League provides more training than anyone else in Kansas, and has since the early 1980's, in this area. No one else approaches the amount of training that we do. As a result we believe that training is the way to go.

On the issue of fees under the KORA, I would suggest that if the legislature decides to limit fees for public records, that **all** state and local records be priced at the same rate. That would be the only reasonable way to go. Finally, I would suggest that since the denials in the newspaper study were not based on an intent to violate the KORA, that increasing penalties and creating additional state bureaucracy will not lead to more compliance with the act. We would hope that the legislature would agree with us on this point and would allow the League, working in concert with state officials, to continue our educational efforts, and increase them if necessary, so as to have the fullest compliance with the Kansas Open Records Act.



Kansas Press Association, Inc.

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Kansas Press Association
Testimony for
House Local Government Committee
Feb. 3, 2000

Mr. Chairman and members of the committee:

My name is David Furnas and I am executive director of the Kansas Press Association, the trade association for the state's 250 weekly and daily newspapers.

Since 1984, following a significant rewrite of the open records statutes, amendments have been added to the point the law has become complex. A recent survey by a group of 19 newspapers indicated a need for clarification in the law, the need for training of government officials and a need for some type of penalty to assure compliance with not just the letter, but the spirit, of the law.

The stories printed this past fall simply illustrated the problems that reporters and citizens were reporting to the Kansas Press Association over the years. We were aware the attorney general's office also received similar complaints.

In a series of meetings over the past two months, most of the concerns have been identified and a variety of solutions have been offered.

The primary concern, of course, is the need for some motivating factor that would encourage compliance. The suggestion of a penalty – incorporated in most of the bills thus far introduced – would meet that need. If our experience with similar penalty provisions in the open meetings act is used as a barometer, the proposal penalties probably would never be used.

However, the knowledge of the liability would lead to better training.

There is general consensus that there is a need to designate an office or individual to provide timely assistance and overview of implementing the open records laws. Whether a separate board or commission, whether in the Secretary of State's office or whether in the Attorney General's office is not a critical issue, although among KPA members the logical location would be in the AG's office.

The current law says any fees charged for copies of records should be reasonable. Unfortunately, as demonstrated in the study done last year, defining reasonable escaped the ability of some governmental officials. As such, despite the wisdom of many jurisdictions, it appears the legislature must define reasonable. Although this point continues to be debated among the media, setting a ceiling on fees appears to be unavoidable. There are several proposals to accomplish this.

Many of the problems, of course, are created by the question of what is open and what should be closed. Some editors will argue that all records should be open. Obviously, the legislature in its wisdom has seen the need for exceptions to that rule. However, pity the poor government official who must memorize the ever-changing landscape of government secrecy and personal privacy.

It has been suggested, and Kansas Press Association concurs, there needs to be a structured review of the existing exemptions to the policy of open government. Call it a sunset provision, provide for an annual or other periodic review, but some type of review process of the exemptions is needed.

If the legislature started reviewing one exception per year, it would take more than 44 years to re-examine the growing list of provisions that circumvent the initial public policy statement of the law.

As we refine a bill through the process, Kansas Press Association stands ready to answer questions and suggest areas of priority.



POLSINELLI
WHITE
VARDEMAN &
SHALTON

Memorandum

TO: THE HONORABLE CARLOS MAYANS, CHAIRMAN
HOUSE COMMITTEE ON LOCAL GOVERNMENT

FROM: JEFFERY S. BOTTENBERG, LEGISLATIVE COUNSEL
KANSAS SHERIFFS' ASSOCIATION

RE: OPEN RECORDS HEARING

DATE: FEBRUARY 2, 2000

Mr. Chairman, members of the Committee, my name is Jeff Bottenberg and I appear today on behalf of the Kansas Sheriffs' Association ("KSA"). KSA is comprised of approximately 2,100 members, both law enforcement and civilian personnel, that work in county sheriff offices throughout the entire state. We appreciate the opportunity to appear today and discuss some of our perspectives on the Kansas Open Records Act ("KORA") and recent news accounts of sheriff department reaction to requests under this law.

We first want to state that it is the policy of all 105 county sheriff offices to fully comply with requests for information from the public. We certainly support the public's right to lawful information, and we make every attempt to comply with such requests. Our personnel, which includes deputies, dispatchers, and civilian employees, strive to keep abreast of the latest changes in the law, just as the employees of any state agency. However, unlike most other agencies and departments of state government, our employees have the solemn duty to protect the public and uphold the law, and many of our officers place themselves in danger on a daily basis to accomplish their job. Indeed, one of the duties of our officers is to document arrests and crime

HOUSE LOCAL GOVERNMENT
2-3-00
Attachment 13

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scenes on official reports that are filed and kept at the local sheriff offices. We do not view these reports as merely a public record, for they contain people's names, date of birth, address, social security numbers, and other private information.

This background of protecting victim privacy is helpful when considering the stories that were printed last fall concerning requests for information from sheriff offices from several unidentified reporters. While the majority of sheriff offices did give out the information requested by the reporters, many of our personnel asked cursory questions as to the identification of the person requesting the information. Since the person asking the question was not from the local community, and since the person refused to give out their name, their requests did raise some eyebrows at a few sheriff offices. Such a reaction is natural, given that one of the exceptions contained in the KORA permit law enforcement to withhold information under certain circumstances. In fact in 1998 an Attorney General report was issued which stated that law enforcement can withhold the names and addresses of crime victims when their release would subject the victim to danger. Therefore a few questions about the reason for the request did not seem out of place for many sheriff department personnel.

However, sheriff offices fully comply with requests from their local newspapers for accident and crime information, since they are familiar with the person requesting the records. And since sheriffs are elected officials, the thought of re-election is one factor that keeps sheriffs sensitive to the needs of their constituents. It certainly would have been better and even-handed if the reporters had asked people from the local communities about the accessibility of public records from their sheriff offices.

Further, what the newspapers did not fully explain or failed to mention at all, is that in many counties where requests were made for information, it had been several months since a

crime was committed. When the sheriff department personnel informed the reporters of the lack of reports, the reporters stated that such sheriff offices refused their requests in the stories. Also, due to the methods that several sheriff offices compile records, it was difficult for several offices to comply with blanket requests for crime reports since only the first page of such report is public information.

It should also be noted that many smaller counties have scarce resources available to comply with requests for immediate access to records. For instance Wallace County, which has a population of about 2,000 people, maintains a sheriff, undersheriff and dispatcher. Therefore a request for records from smaller sheriff offices would consume valuable time that could better be spent serving the people of the county. In fact a request for records in a smaller county with limited staff certainly could constitute an "unreasonable burden" on the local sheriff department, which would then refuse to release the information in accordance with KORA

This is not too say that there were not problems with a few sheriff offices that were not completely familiar with KORA. We realize that information and training is the key to solving any problems that might exist, and we try as much as possible to give our employees updates on the law. In fact, due to the open record stories, the Kansas Law Enforcement Training Center has decided to hold an open records session during the two-week sheriff's orientation school held after every sheriffs' election. In fact, we have already had a class at our fall conference.

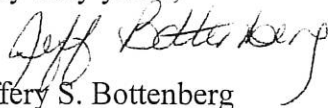
However what will not help are the civil penalties contained in HB 2722 and 2729 that an employee could incur if he or she refuses to give out certain information. We see nothing but problems from such a drastic step. For instance, what would happen to an employee of a sheriff department if he or she truly believes the information requested could not be released due to the criminal investigation exemption in the KORA. Would the county attorney bring an action in the

district court to determine if such an employee had a "reasonable basis in fact or law" to deny the request? It would also not be impossible to imagine a sheriff department employee, for fear of legal action, to give out information that truly does fall under an exemption. Would that employee then be entitled to indemnification from the state if a crime victim recovers damages against him for releasing the record? We believe that holding the potential for litigation over an honest, hard working government employee is not the correct way to handle this problem. Indeed, a quick search of case law on the KORA reveals many cases and Attorney General opinions addressing the meaning of the exemptions contained in the act. If attorneys and the heads of state agencies have difficulty deciding on what constitutes a public record, it is certainly unfair to require sheriff offices to have such an extensive knowledge of the meaning of each exemption that their employees could be fined for every possible violation.

The KSA certainly wishes to comply with requests about public information. However we feel that the correct way to accomplish greater accessibility is through education, not intimidation. We also believe that the current ability to bring an action for mandamus in the district court to compel production of open records provides an appropriate method of ensuring access to those records. A plaintiff successful in bringing such an action is entitled to attorney fees against the public agency that denied the records, not the individual employee as provided in the two house bills.

Once again, we thank you for the opportunity to address this issue, and please do not hesitate to contact me if I may be of further assistance.

Very truly yours,


Jeffery S. Bottenberg



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February 3, 2000

Open Government

Testimony before House Local Government Committee

Good afternoon, Mr. Chairman and Members of the Committee. I am Gary McNair, general manager of KSNT TV, the NBC affiliate in Topeka. I also serve on the Board of Directors and as Legislative Chair for Kansas Association of Broadcasters. KAB is a trade association serving a membership of radio and television stations in Kansas. We appreciate the opportunity to present our views on improving open government in Kansas.

I'm sure we agree that if the people's business can be done in secret, it only increases the chances for misdeeds, mistrust and misinformation. And none of those consequences can serve us well. I feel confident our goals are the same - to put in place open government legislation that works for everyone and is relatively easy to interpret and administrate.

On open records legislation -- we don't need to reinvent the wheel here in Kansas. We have a good basic law, and with just a few changes, we can have a "model" law.

The state of Florida has been praised for their open records legislation. There are items in that legislation that can work for us as well. First -- sunset the exceptions. It would appear to me that our 44 exceptions have done plenty to "muddy the waters" of what was otherwise a sensible open records act. If nothing else, it's made the 1983 legislation difficult to enforce.

The Florida legislation also provides solid guidelines for an agency to recover the costs of duplicating records. We think it is a public agency's duty to willingly provide public records and costs associated with that should be absorbed by the agency. However, we recognize that there are occasions when requests require extensive use of staff time and resources, in which case, the agency should be allowed to charge a reasonable fee based on the costs incurred. We encourage you to consider the Florida law in determining fees.

Attached to my testimony we are providing you with our specific recommendations related to attorney fees, penalties for violations, sunseting the exemptions, and fees agencies may charge.

For the Kansas Open Meetings Act, we have just three items we would like to propose.

1. Add language to the preamble directing the court to “liberally construe” the act to protect the public’s right of access to the government process.
2. Add language to define nonelected personnel matters which may be discussed in executive session as “hiring, termination of employment, and employee disciplinary matters of individual nonelected personnel.”
3. Add language requiring the taping of executive sessions.

We think these three items can go a long way toward improving the understanding and intent of open meetings legislation and enforcement.

I thank you for affording us this time to address our concerns and proposals. We are both in the position of serving the citizens of Kansas with information that impacts their lives. We look forward to improving the flow and quality of that information as it relates to the public’s business.

Thank you.

2/3/00

KAB Proposed amendments to Kansas Open Records act

Regarding Attorney Fees

Amend K.S.A. 45-222 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.

shall

unlawful.

(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.

Regarding penalties for violations (amended language from Kansas Open Meetings Act)

Amend K.S.A. 45-223 to read as follows: K.S.A. 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.~~

(a) Any person subject to this act who knowingly violates any of the provisions of this act or who intentionally fails to furnish information as required by this act shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney, in a sum set by the court of not to exceed five hundred dollars (\$500) for each violation.

(b) Civil penalties sued for and recovered hereunder by the attorney general shall be paid into the state general fund. Civil penalties sued for and recovered hereunder by a county or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

Amend K.S.A. 45-219 (regarding fees for records).

KAB recommends consideration of Florida's law which does not require, but allows agencies to charge for copies, as long as the fee does not exceed that established by law. If no other fee is set in statute, the custodian may charge up to 15 cents per one-sided page for paper copies that are 8 ½" x 14" or smaller, and no more than 20 cents for two-sided duplicated copies. Up to \$1 per page may be charged for certified copies. For other copies, the charge is limited to the actual cost of duplication. The phrase "actual cost of duplication" is defined to mean "the cost of the materials and supplies used to duplicate the record, but it does NOT include the labor and overhead cost. If the nature of the request requires extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, the agency may charge an additional special service charge, which must be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service.

Amend K.S.A. 45-221 regarding certain records not required to be open...

KAB recommends adding a sunset provision which would repeal current exceptions on July 1, 2003, unless the legislature acts not to repeal them. Thereafter, legislative review of exceptions five years after initial enactment or major revision to exceptions ... similar to Florida law.

HOUSE BILL No. 2628

By Committee on Governmental Organization and Elections
1-13

9 AN ACT concerning the open meetings act; relating to executive or
10 closed meetings; amending K.S.A. 75-4320a and K.S.A. 1999 Supp.
11 75-4319 and repealing the existing sections.

and K.S.A. 75-4317,

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1.2. K.S.A. 1999 Supp. 75-4319 is hereby amended to read as
15 follows: 75-4319. (a) Upon formal motion made, seconded and carried,
16 all bodies and agencies subject to the open meetings act may recess, but
17 not adjourn, open meetings for closed or executive meetings. Any motion
18 to recess for a closed or executive meeting shall include a statement of
19 (1) the justification for closing the meeting, (2) the subjects to be dis-
20 cussed during the closed or executive meeting and (3) the time and place
21 at which the open meeting shall resume. Such motion, including the re-
22 quired statement, shall be recorded in the minutes of the meeting and
23 shall be maintained as a part of the permanent records of the body or
24 agency. Discussion during the closed or executive meeting shall be limited
25 to those subjects stated in the motion.

Section 1. KSA 75-4317 is hereby amended to read as follows: 75-4317. (a)
This act shall be known and may be cited as the Kansas open meetings act.
(b) In recognition of the fact that a representative government is dependent upon
an informed electorate and that access to the process of government is an
important part of having an informed electorate, it is declared to be the policy of
this state that meetings for the conduct of governmental affairs and the transaction
of governmental business be open to the public.
(b) (c) It is declared hereby to be against the public policy of this state for any
such meeting to be adjourned to another time or place, or other action taken, in
order to subvert the policy of open public meetings giving public access to the
process of government as pronounced in subsection (a) (b). This act shall be
liberally construed to protect and encourage the public's right of access to the
process of government through open public meetings.

26 (b) No subjects shall be discussed at any closed or executive meeting,
27 except the following:

- 28 (1) ~~Personnel matters of~~ nonelected personnel;
- 29 (2) consultation with an attorney for the body or agency which would
- 30 be deemed privileged in the attorney-client relationship;
- 31 (3) matters relating to employer-employee negotiations whether or
- 32 not in consultation with the representative or representatives of the body
- 33 or agency;
- 34 (4) confidential data relating to financial affairs or trade secrets of
- 35 corporations, partnerships, trusts, and individual proprietorships;
- 36 (5) matters relating to actions adversely or favorably affecting a per-
- 37 son as a student, patient or resident of a public institution, except that
- 38 any such person shall have the right to a public hearing if requested by
- 39 the person;
- 40 (6) preliminary discussions relating to the acquisition of real property;
- 41 (7) matters permitted to be discussed in a closed or executive meeting
- 42 pursuant to K.S.A. 74-8804 and amendments thereto;
- 43 (8) matters permitted to be discussed in a closed or executive meeting

Hiring, termination of employment, and employee disciplinary matters of
individual

1 pursuant to subsection (e) of K.S.A. 38-1507 and amendments thereto or
 2 subsection (f) of K.S.A. 38-1508 and amendments thereto;
 3 (9) matters permitted to be discussed in a closed or executive meeting
 4 pursuant to subsection (j) of K.S.A. 22a-243 and amendments thereto;
 5 (10) matters permitted to be discussed in a closed or executive meet-
 6 ing pursuant to subsection (e) of K.S.A. 44-596 and amendments thereto;
 7 (11) matters permitted to be discussed in a closed or executive meet-
 8 ing pursuant to subsection (g) of K.S.A. 1999 Supp. 39-7,119 and amend-
 9 ments thereto;
 10 (12) matters required to be discussed in a closed or executive meeting
 11 pursuant to a tribal-state gaming compact; and
 12 (13) matters relating to the security of a public body or agency, public
 13 building or facility or the information system of a public body or agency,
 14 if the discussion of such matters at an open meeting would jeopardize
 15 the security of such public body, agency, building, facility or information
 16 system.

17 (c) No binding action shall be taken during closed or executive re-
 18 cesses, and such recesses shall not be used as a subterfuge to defeat the
 19 purposes of this act.

20 (d) *Closed or executive meetings ~~may~~ be taped or otherwise recorded.* shall
 21 *Such tape or recording shall not be considered a public record and except*
 22 *as provided by K.S.A. 75-4320a, and amendments thereto, or section 3*
 23 *and amendments thereto, such tape or recording shall not be subject to*
 24 *disclosure or discovery in a civil or criminal action.*

25 Sec. 2.3. K.S.A. 75-4320a is hereby amended to read as follows: 75-
 26 4320a. (a) The district court of any county in which a meeting is held
 27 shall have jurisdiction to enforce the purposes of K.S.A. 75-4318 and 75-
 28 4319, and amendments thereto, with respect to such meeting, by injunc-
 29 tion, mandamus or other appropriate order, on application of any person.

30 (b) In any action hereunder, the burden of proof shall be on the
 31 public body or agency to sustain its action.

32 (c) In any action hereunder, the court may award court costs to the
 33 person seeking to enforce the provisions of K.S.A. 75-4318 or 75-4319,
 34 and amendments thereto, if the court finds that the provisions of those
 35 statutes were violated. The award shall be assessed against the public
 36 agency or body responsible for the violation.

37 (d) In any action hereunder in which the defendant is the prevailing
 38 party, the court may award to the defendant court costs if the court finds
 39 that the plaintiff maintained the action frivolously, not in good faith or
 40 without a reasonable basis in fact or law.

41 (e) *In any action hereunder for violations of K.S.A. 75-4319, and*
 42 *amendments thereto, the court on its own motion, or on the motion of the*
 43 *attorney general or the county or district attorney, may review, in camera,*

1 *the tape or recording of the closed or executive meeting which is the*
2 *subject of such action. After such review, if the court finds that a violation*
3 *has occurred, such tape or recording shall be open for public inspection.*

4 (e) (f) Except as otherwise provided by law, proceedings arising under
5 this section shall take precedence over all other cases and shall be assigned
6 for hearing and trial at the earliest practicable date.

7 (f) (g) As used in this section, "meeting" has the meaning provided
8 by K.S.A. 75-4317a and amendments thereto.

9 New Sec. 3.4. (a) In any investigation of an alleged violation of the
10 provisions of K.S.A. 75-4319, and amendments thereto, the attorney gen-
11 eral or county or district attorney may compel the production of a tape
12 or other recording of the closed or executive meeting which is the subject
13 of such investigation. After review of such tape or recording by the at-
14 torney general or county or district attorney, such attorney finds that a
15 violation has occurred, such tape or recording shall be open for public
16 inspection.

17 (b) Any person who has filed a civil action concerning a violation of
18 K.S.A. 75-4319, and amendments thereto, may petition the judge of the
19 district court in which such action is pending to review, in camera, any
20 tape or recording of the closed or executive meeting which is the subject
21 of such action. After such review, if the court finds that a violation has
22 occurred, such tape or recording shall be open for public inspection.

23 Sec. 4. 5. K.S.A. 75-4320a ~~and~~ K.S.A. 1999 Supp. 75-4319 are hereby and 75-4317
24 repealed.

25 Sec. 5.6. This act shall take effect and be in force from and after its
26 publication in the statute book.
