

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT.

The meeting was called to order by Chairman Senator Janice Hardenburger at 1:00 p.m. on March 28, 2000, in Room 245-N of the Capitol.

All members were present except: Senator Petty
Senator Praeger
Senator Steineger

Committee staff present: Dennis Hodgins, Legislative Research Department
Mike Heim, Legislative Research Department
Ken Wilke, Revisor of Statutes
Graceanna Wood, Committee Secretary

Conferees appearing before the committee: Ned Valentine, Kansas Press Association, Clay Center
Publisher

Others attending: See attached list

Chairman Hardenburger opened the hearing on **S Sub HB 2864 concerning the open records act; concerning the open meetings acts; establishing the position of public information officer; prescribing the powers and duties, and repealing the existing section.** She said that the most important thing for the Committee to understand the provisions; therefore, she asked staff to explain **S Sub HB 2864.**

Senator Vidricksen said there have never been any complaints about the open records law itself. He stated with the changes being made to the bill, it will not pass this year.

Chairman Hardenburger said that it does put the Committee in a difficult situation with the time frame permitted to conduct hearings and take action on the bill. She stated she wanted to do justice to the bill, but would not do it in a hurry.

Mike Heim, legislative staff presented and explained four (4) attachments to the Committee, which are attached. He handed out a copy of the bill as amended by the House as a Whole, also a memo on the Kansas Open Records Act, a revised supplemental note which provides the changes that were made by the House on the floor, and finally a one page summary, which are the major provisions of **S Sub HB 2864.** (Attachment #1) (Attachment #2) (Attachment #3) (Attachment #4)

Senator Gooch asked if there would be an additional person that would be required in the Attorney General's Office to handle the additional work, and would the fines be a resource that would pay for the additional worker. Mr. Heim said it would not, as the additional funds would be for education of the public on Open Records Act.

The Committee discussed organizations or individuals who want open records for non-profit and were told they could not get it. Senator Gooch said to the Committee he hoped they would get an answer to the situation, before the bill would be passed out of Committee.

The Committee also discussed closed executive meetings.

Chairman Hardenburger introduced Ned Valentine, Publisher of the Clay Center Dispatch to the Committee.

Mr. Valentine presented testimony to the Committee on **Substitute for HB 2864** as a proponent. He said that access to government is critical for the industry - but more importantly, open government is critical for a sense of community. (Attachment #5)

CONTINUATION SHEET - MARCH 28, 2000

Chairman Hardenburger asked Mr. Valentine's opinion on the Federal Freedom of Information Act. She said that there are special provisions for the press and the release of information can be expedited if the press makes the request, compared to a citizen, because generally the press can identify what is a common interest to the public to know. She asked if he would support some exceptions for the press in an Open Record Act that would expedite release. Right now this act only allows three business days to release open records, unless it can be proven it requires seven days. In the Federal Freedom of Information Act, you are allowed 20 days to respond to a request, with the exception of the press if they are requesting and proving that it is a common interest.

Mr. Valentine said it would be a benefit to the readers to be able to get the information as rapidly as possible.

Chairman Hardenburger made a request of David Furnas, Kansas Press Association, regarding a "sting" operation, and asked that he bring the information to the Committee in order to make it more clear what the problem really is. She said so many times the legislature responds to one incident in Kansas, and they pass a law to cover the one incident and then everyone has to follow the law. She said the Committee needs to understand what the problem is, how we can respond to the problem.

Meeting was adjourned at 2:00 p.m. Next meeting March 29, 2000.

ELECTIONS & LOCAL GOVERNMENT COMMITTEE GUEST LIST

DATE: MARCH 28, 2000

NAME	REPRESENTING
Judy Melin	16. Assn of Counties
Kelley Khetala	City of Overland Park
Jacque Oakes	SQE
Ron Appletoft	Water Dist. No 1 of Jolo
Dana Faxon	Johnson County
Randy Allen	Ks. Assn. of Counties
Beth Lange	SRES
Dick Bauman	KDOT
Steve Phillips	A. G.
Briella Scott	USA
Craig Grant	KNEA
MARK DEBETTI	KNEA
Diane Gjerstad	Wichita Public Schools
Kim Gulley	LKM
Mike Teeter	Randolph - Blue Valley HS
Scott Lally	" " "
Mitch Krause	
Jim Youally	USD #512
Bill Sneed	KPOA

ELECTIONS & LOCAL GOVERNMENT COMMITTEE GUEST LIST

DATE: 3-28-00

NAME	REPRESENTING
MIKE TAYLOR	City of Wichita
Denise Apt	USA / KCK-
Sheldon Fedorin	KACCT
BOB POPE	Randolph - Blue Valley HS
Ken Mohr	LKM
Earl Willis Jr	Self
Jane Willis	self
Lee Wright	Farmers Ins.
Melissa Waugemann	Sec. of State
Marci Liss	Sedgewick County
DAVID FURNAS	Ks PRESS
STEVE KEARNEY	KS PRESS ASSN.
NED VALENTINE	CLAY CENTER DISPATCH
Mike Hultes	Ks. Gov't. Consulting

Substitute for HOUSE BILL No. 2864

By Committee on Local Government

3-21

12 AN ACT concerning the open records act; concerning the open meetings
13 act; establishing the position of public information officer; prescribing
14 the powers and duties thereof; amending K.S.A. 45-215, 45-218, 45-
15 220, 45-222, 45-223, 75-4317a, 75-4318, 75-4320 and 75-4320a and
16 K.S.A. 1999 Supp. 45-217, 45-219, 45-221, 75-4317 and 75-4319 and
17 repealing the existing sections.
18

Public Information Officer position created within Attorney General's Office.

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

20 New Section 1. (a) There is hereby created within the office of the
21 attorney general the position of public information officer. The public
22 information officer shall be appointed by the attorney general within the
23 current unclassified positions authorized for the office of attorney general.
24 The public information officer shall serve at the pleasure of the attorney
25 general.

26 (b) The public information officer or the public information officer's
27 designee shall:

28 (1) Prepare and provide educational materials and information con-
29 cerning this act, the open records act and the open meetings act.

Duties.

30 (2) Be available to assist public bodies and agencies and members of
31 the general public to resolve disputes relating to the open records act and
32 the open meetings act in an informal procedure as authorized by section
33 3, and amendments thereto.

34 (3) Respond to inquiries relating to this act, the open records act and
35 the open meetings act.

36 (4) Issue advisory opinions, when requested upon all questions of law
37 relating to this act, the open records act and the open meetings act.

38 (5) Establish the requirements for the content, size, shape and other
39 physical characteristics of a sign required to be displayed under the open
40 records act. In establishing such requirements for the content of the sign,
41 the public information officer shall include plainly written basic infor-
42 mation about the rights of a requestor, the responsibilities of a public
43 agency and the procedures for inspecting and obtaining a copy of public

1 records under the open records act.

2 (6) Establish the requirements for the content, size, shape and other

3
4 physical characteristics of a sign required to be displayed under the open
5 meetings act. In establishing such requirements for the content of the
6 sign, the public information officer shall include plainly written basic in-
7 formation about the rights of the public, the responsibilities of a public
8 body or agency and the procedure for obtaining notice under the open
9 meetings act.

10 (7) Conduct hearings on complaints of alleged violations of the open
11 records act and the open meetings act as provided by section 2, and
12 amendments thereto.

13 (8) Impose fines and penalties and award attorney fees as authorized
14 by section 2, and amendments thereto, for violations of the open records
15 act and the open meetings act.

16 (9) Determine, pursuant to subsection (c)(5) of K.S.A. 45-219, and
17 amendments thereto, whether amounts charged for public records are
18 reasonable.

19 (10) Adopt rules and regulations necessary to implement the provi-
20 sions of this act, the open records act and the open meetings act.

21 (11) Perform all other duties as may be necessary to carry out the
22 purposes of this act, the open records act and the open meetings act and
23 any other duties as otherwise may be prescribed by law.

24 (c) The public information officer shall not be subject to suit for any
25 action or failure to act under this act, the open records act or the open
26 meetings act.

27 New Sec. 2. (a) ~~An assistant or deputy attorney general who is under~~
28 ~~a separate line of direct supervision from the public information officer,~~
29 ~~any [Any]~~ county or district attorney or any person aggrieved by an al-
30 leged violation of the open records act or the open meetings act may file
31 a verified complaint with the public information officer. Such complaints
32 shall be in writing, shall state the facts upon which the allegations are
33 based and shall contain such other information and be in such form as
34 the public information officer may require. Complaints shall be filed
35 within 45 days after the alleged violation occurred, but may be amended
36 with the approval of the public information officer. A respondent may file
37 a verified answer to the complaint against the respondent and with the
38 leave of the public information officer, may amend the answer filed by
39 the respondent at any time.

40 (b) Upon receipt of any such complaint, the public information offi-
41 cer shall serve notice upon the aggrieved person acknowledging such
42 filing and advising the aggrieved person of the time limits and choice of
43 forums provided under this act. Within 10 days of the filing of the com-

Cleanup needed.

Immunity for acts or omissions.

Who may file an administrative action—local prosecutor or any person aggrieved.

Notice.

1 plaint, the public information officer shall serve on the respondent a no-
2 tice identifying the alleged violation and advising such respondent of the
3 procedural rights and obligations of respondents under this act, together

4
5 with a copy of the original complaint. Service of the notice shall be made
6 in the manner prescribed by the code of civil procedure.

7 (c) A person who is not named as a respondent in a complaint, but
8 who is identified as a respondent in the course of investigation, may be
9 joined as an additional or substitute respondent upon written notice, un-
10 der subsections (a) and (b), to such person, from the public access officer.

11 (d) ~~(1) In investigating alleged violations of the Kansas open meet-~~
12 ~~ings act or the Kansas open records act the public information officer~~
13 ~~may:~~

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

15 ~~—(2) take testimony under oath;~~

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

18 ~~—(4) require attendance during such examination of documentary ma-~~
19 ~~terial and take testimony under oath or acknowledgment in respect of~~
20 ~~any such documentary material; and~~

21 ~~—(5) serve interrogatories.~~

22 (e) ~~[(d)]~~ Hearings before the public access officer shall be conducted
23 in accordance with the provisions of the Kansas administrative procedure
24 act and shall be subject to review and enforcement in accordance with
25 the act for judicial review and civil enforcement of agency actions. A
26 decision by the public information officer shall be considered the final
27 agency action. Appeals of such decisions shall be made to the district
28 court in accordance with the act for judicial review and civil enforcement
29 of agency actions and not to the attorney general.

30 (f) ~~[(e)]~~ The public information officer may review the records *in*
31 *camera* in any action concerning records, and the records shall not be
32 subject to disclosure or open to public inspection unless the officer finds
33 them to be open and the time for appeal has run. **[Actions taken under**
34 **this subsection shall be subject to the provisions of the lawyer-**
35 **client privilege described in K.S.A. 60-426 and amendments**
36 **thereto.]**

37 (g) ~~The public information officer may review the tape or recording~~
38 ~~of any closed or executive session which is the subject of investigation. If~~
39 ~~the public information officer finds a violation has occurred, that portion~~
40 ~~of such tape or recording of the closed or executive session which should~~
41 ~~have been open shall be open for public inspection. [Actions taken un-~~
42 ~~der this subsection shall be subject to the provisions of the lawyer-~~
43 ~~client privilege described in K.S.A. 60-426 and amendments~~

Joining added parties.

Investigative powers deleted.

Hearings before Public Administrative Officer.

In camera review of records—subject to lawyer/client privilege.

Cleanup needed.

1 thereto. [

2 ~~(h)~~ [(f)] Unless otherwise agreed to by the parties, the public infor-
3 mation officer shall render a decision on the complaint within 45 days of
4 the date on which the answer to such complaint was filed. Following such

Public Information Officer decision within 45 days.

5
6 hearing and if the public information officer determines there has been
7 a violation of the open records act or the open meetings act and such
8 violation was not committed in good faith and without a reasonable basis
9 in fact of law, the public information officer may:

10 ~~— (1) Award attorney fees to the person filing the complaint. Attorney~~
11 ~~fees shall not be awarded against a public body or agency if such body or~~
12 ~~agency acted in compliance with an opinion issued by the public infor-~~
13 ~~mation officer; and~~

14 ~~— (2) impose a civil penalty not to exceed \$500 against the public body~~
15 ~~or agency. The public information officer shall remit all moneys received~~
16 ~~pursuant to this section to the state treasurer. The state treasurer shall~~
17 ~~deposit such moneys in the state treasury as provided in section 5, and~~
18 ~~amendments thereto.~~

Civil penalty of not to exceed \$500.

19 ~~(i)~~ [(g)] The public information officer may assess the cost of the
20 proceedings conducted pursuant to this section against the parties to such
21 proceedings.

Assess costs.

22 ~~(j) In lieu of filing a complaint with the public information officer, an~~
23 ~~action may be brought directly with the district court as provided by the~~
24 ~~open records act and the open meetings act with no requirement that~~
25 ~~administrative remedies be exhausted.~~

26 New Sec. 3. The public information officer may establish an informal
27 procedure for resolving disputes relating to alleged violations of the open
28 records act and the open meetings act.

Informal procedures for resolving disputes.

29 New Sec. 4. (a) At the request of any person, the public information
30 officer may issue advisory opinions relating to this act, the open records
31 act and the open meetings act and the enforcement thereof. The com-
32 pliance by a governmental agency or body with an advisory opinion shall
33 preclude the imposition of fines, penalties or attorney fees against such
34 agency or body in any proceeding before the public information officer
35 or a court or in any subsequent appeal. The public information officer
36 shall cause to be published on the internet and otherwise [**advisory**]
37 opinions, decisions, orders and related materials issued or provided by
38 the public information officer. Copies of such [**advisory**] opinions shall
39 be filed in the same manner provided by K.S.A. 75-704a, and amend-
40 ments thereto, for the filing of [**advisory**] opinions issued by the attorney
41 general.

Advisory opinions.

42 (b) The public information officer shall not issue an [**advisory**] opin-
43 ion on any specific issue which is the subject of ongoing litigation.

Senate Elections & Local Government
Date: 3-28-00
Attachment # 1-4

1 New Sec. 5. (a) There is hereby established the open records and
2 open meetings enforcement fund in the state treasury which shall be
3 administered by the public information officer. All moneys collected for
4 fines and penalties under the open records act or the open meetings act
5 shall be deposited in the state treasury to the credit of the open records
6

7 and open meetings enforcement fund. Moneys in the open records and
8 open meetings enforcement fund shall be used to pay the costs of pro-
9 viding educational information and material to public bodies and agencies
10 and to the public concerning this act, the open records act and the open
11 meetings act. All expenditures from the open records and open meetings
12 fund shall be made in accordance with appropriation acts upon warrants
13 of the director of accounts and reports issued pursuant to vouchers ap-
14 proved by the public information officer or the public information offi-
15 cer's designee.

16 (b) On or before the 10th of each month, the director of accounts
17 and reports shall transfer from the state general fund to the open records
18 and open meetings fund interest earnings based on:

19 (1) The average daily balance of moneys in the open records and open
20 meetings fund for the preceding month; and

21 (2) the net earnings rate of the pooled money investment portfolio
22 for the preceding month.

23 Sec. 6. K.S.A. 45-215 is hereby amended to read as follows: 45-215.
24 K.S.A. 45-215 through ~~45-223~~ 45-225, and sections 12 and 45 [16], and
25 amendments thereto, shall be known and may be cited as the open records
26 act.

27 Sec. 7. K.S.A. 1999 Supp. 45-217 is hereby amended to read as fol-
28 lows: 45-217. As used in the open records act, unless the context other-
29 wise requires:

30 (a) "Business day" means any day other than a Saturday, Sunday or
31 day designated as a holiday by the congress of the United States, by the
32 legislature or governor of this state or by the respective political subdi-
33 vision of this state.

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

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

Open Records and Open Meetings Enforcement Fund for education.

Technical change to KORA.

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

5 (e) "Public information officer" means the public access officer ap-
6 pointed pursuant to section 1, and amendments thereto.

Public Information Officer defined in KORA.

7
8 (e) (f) (1) "Public agency" means: ~~the~~
9 **[(A) The]** state or any political or taxing subdivision of the state or any
10 office, officer, agency or instrumentality thereof, or any other entity re-
11 ceiving or expending and supported in whole or in part by the public
12 funds appropriated by the state or by public funds of any political or taxing
13 subdivision of the state.

14 (2) "Public agency" shall not include:
15 (A) Any entity solely by reason of payment from public funds for
16 property, goods or services of such entity; (B) any municipal judge, judge
17 of the district court, judge of the court of appeals or justice of the supreme
18 court; or (C) any officer or employee of the state or political or taxing
19 subdivision of the state if the state or political or taxing subdivision does
20 not provide the officer or employee with an office which is open to the
21 public at least 35 hours a week.

22 (f) (g) (1) "Public record" means any recorded information, regard-
23 less of form or characteristics, which is made, maintained or kept by or
24 is in the possession of any public agency including, but not limited to, an
25 agreement in settlement of litigation involving the Kansas public em-
26 ployees retirement system and the investment of moneys of the fund.

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

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

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

43 Sec. 8. K.S.A. 45-218 is hereby amended to read as follows: 45-218.

Senate Elections & Local Government
Date: 7-28-00
Attachment # 1-6

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

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

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

(d) Except as provided by this section, and subsection (d) of K.S.A. 45-220, and amendments thereto, each request for access to a public record shall be ~~acted upon as soon as possible, but not later than the end of the third business day following the date that~~ **[processed]** at the time the request is received. *If the record is not on-site, the records shall be retrieved not later than the end of the third business day following the date that the request is received. If the record must be constructed and prepared, the record shall be available not later than the end of the seventh business day following the date that the request is received.* If access to the public record is not granted ~~immediately~~ **[or cannot be granted as required by this section]**, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. If the request for access is denied **[or delayed]**, the custodian shall provide, upon request, a written statement of the grounds for denial **[or the reason for the delay]**. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester *of the public record* not later than the end of the third business day following the date that the request for the statement is received.

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

(f) A public agency may charge and require advance payment of a fee

Time frame for producing records by public agency.

Standard for refusing records request.

Senate Elections & Local Government
Date: 3-28-00
Attachment # 1-7

1 for providing access to or furnishing copies of public records, subject to
2 K.S.A. 45-219, *and amendments thereto*.

3 Sec. 9. K.S.A. 1999 Supp. 45-219 is hereby amended to read as fol-
4 lows: 45-219. (a) Any person may make abstracts or obtain copies of any
5 public record to which such person has access under this act. If copies
6 are requested, the public agency may require a written request and ad-
7 vance payment *at the time of the request* of the prescribed fee. A public
8 agency shall not be required to provide copies of radio or recording tapes

9
10 or discs, video tapes or films, pictures, slides, graphics, illustrations or
11 similar audio or visual items or devices, unless such items or devices were
12 shown or played to a public meeting of the governing body thereof, but
13 the public agency shall not be required to provide such items or devices
14 which are copyrighted by a person other than the public agency.

15 (b) Copies of public records shall be made ~~at the time of the request~~
16 ~~and~~ while the records are in the possession, custody and control of the
17 custodian or a person designated by the custodian and shall be made
18 under the supervision of such custodian or person. When practical, copies
19 shall be made in the place where the records are kept. If it is impractical
20 to do so, the custodian shall allow *reasonable* arrangements to be made
21 for use of other facilities *on a timely basis*. If it is necessary to use other
22 facilities for copying, the cost thereof shall be paid by the person desiring
23 a copy of the records. In addition, the public agency may charge the same
24 fee for the services rendered in supervising the copying as for furnishing
25 copies under subsection (c) and may establish a reasonable schedule of
26 times for making copies at other facilities.

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

31 (1) In the case of fees for copies of records, the fees shall not exceed
32 the actual cost of furnishing copies, including the cost of staff time re-
33 quired to make the information available.

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

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

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

43 (5) Fees for access to or copies of public records of a public agency

1 within the executive branch of the state government shall be established
2 by the agency head. Any person requesting records may appeal the rea-
3 sonableness of the fees charged for providing access to or furnishing cop-
4 ies of such records to the ~~secretary of administration~~ *public information*
5 *officer* whose decision shall be final. A fee for copies of public records
6 which is equal to or less than \$.25 per page shall be deemed a reasonable
7 fee.

8 (d) Except as otherwise authorized pursuant to K.S.A. 75-4215, and
9 amendments thereto, each public agency within the executive branch of

10 the state government shall remit all moneys received by or for it from
11 fees charged pursuant to this section to the state treasurer in accordance
12 with K.S.A. 75-4215, and amendments thereto. Unless otherwise specif-
13 ically provided by law, the state treasurer shall deposit the entire amount
14 thereof in the state treasury and credit the same to the state general fund
15 or an appropriate fee fund as determined by the agency head.

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

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

27 Sec. 10. K.S.A. 45-220 is hereby amended to read as follows: 45-220.

28 (a) Each public agency shall adopt procedures to be followed in request-
29 ing access to and obtaining copies of public records, which procedures
30 shall provide full access to public records, protect public records from
31 damage and disorganization, prevent excessive disruption of the agency's
32 essential functions, provide assistance and information upon request and
33 insure efficient and timely action in response to applications for inspec-
34 tion of public records.

35 (b) A public agency may require a written request for inspection of
36 public records but shall not otherwise require a request to be made in
37 any particular form. Except as otherwise provided by subsection (c), a
38 public agency shall not require that a request contain more information
39 than the requester's name and address and the information necessary to
40 ascertain the records to which the requester desires access and the re-
41 quester's right of access to the records. A public agency may require proof
42 of identity of any person requesting access to a public record. No request
43

Public Information Officer to decide reasonableness of state agency fees.

1 shall be returned, delayed or denied because of any technicality unless it
2 is impossible to determine the records to which the requester desires
3 access.

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

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

10 (2) the requester does not intend to, and will not: (A) Use any list of
11 names or addresses contained in or derived from the records or infor-
12 mation for the purpose of selling or offering for sale any property or
13 service to any person listed or to any person who resides at any address
14 listed; or (B) sell, give or otherwise make available to any person any list
15 of names or addresses contained in or derived from the records or infor-
16 mation for the purpose of allowing that person to sell or offer for sale any
17 property or service to any person listed or to any person who resides at
18 any address listed.

19 (d) A public agency shall establish, for business days when it does not
20 maintain regular office hours, reasonable hours when persons may inspect
21 and obtain copies of the agency's records. The public agency may require
22 that any person desiring to inspect or obtain copies of the agency's records
23 during such hours so notify the agency, but such notice shall not be re-
24 quired to be in writing and shall not be required to be given more than
25 24 hours prior to the hours established for inspection and obtaining
26 copies.

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

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

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

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

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

40 (4) The procedures to be followed in requesting access to and ob-
41 taining copies of the agency's records, including procedures for giving
42 notice of a desire to inspect or obtain copies of records during hours
43

1 established by the agency pursuant to subsection (c).

2 (g) *The official custodian of a public agency shall display [at the*
3 **central administrative office of the public agency] ~~a sign~~ a con-**
4 **spicuous place at the principal office of the public agency a notice]**
5 *that contains basic information about the rights of a requestor, the re-*
6 *sponsibilities of a public agency and the procedures for inspecting or*
7 *obtaining a copy of public information under the open records act. [Such*
8 **notice may, but shall not be required to, be similarly posted at any**
9 **other office of or place in such public agency.] *The official custodian***
10 *shall display the sign at one or more places in the administrative offices*
11 *of the public agency where such sign clearly will be visible to: (1) Members*

12 *of the public who request public information in person under the open*
13 *records act; and (2) employees of the public agency whose duties include*
14 *receiving or responding to requests under this act. Such sign shall conform*
15 *to the requirements prescribed by the public information officer.*

16 Sec. 11. K.S.A. 1999 Supp. 45-221 is hereby amended to read as
17 follows: 45-221. (a) *Subject to the provisions of section 12, and amend-*
18 *ments thereto, and except to the extent disclosure is otherwise required*
19 *by law, a public agency shall not be required to disclose:*

20 (1) Records the disclosure of which is specifically prohibited or re-
21 stricted by federal law, state statute or rule of the Kansas supreme court
22 or the disclosure of which is prohibited or restricted pursuant to specific
23 authorization of federal law, state statute or rule of the Kansas supreme
24 court to restrict or prohibit disclosure.

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

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

29 (4) Personnel records, performance ratings or individually identifi-
30 able records pertaining to employees or applicants for employment, except
31 that this exemption shall not apply to the names, positions, salaries and
32 lengths of service of officers and employees of public agencies once they
33 are employed as such.

34 (5) Information which would reveal the identity of any undercover
35 agent or any informant reporting a specific violation of law.

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

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

41 (8) Information which would reveal the identity of an individual who
42 lawfully makes a donation to a public agency, if anonymity of the donor
43

Notice of rights under KORA to be displayed.

1 is a condition of the donation.

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

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

10 (A) Is in the public interest;

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

12 (C) would not reveal the identity of any confidential source or un-
13

14 dercover agent;

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

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

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

22 (11) Records of agencies involved in administrative adjudication or
23 civil litigation, compiled in the process of detecting or investigating vio-
24 lations of civil law or administrative rules and regulations, if disclosure
25 would interfere with a prospective administrative adjudication or civil
26 litigation or reveal the identity of a confidential source or undercover
27 agent.

28 (12) Records of emergency or security information or procedures of
29 a public agency, or plans, drawings, specifications or related information
30 for any building or facility which is used for purposes requiring security
31 measures in or around the building or facility or which is used for the
32 generation or transmission of power, water, fuels or communications, if
33 disclosure would jeopardize security of the public agency, building or
34 facility.

35 (13) The contents of appraisals or engineering or feasibility estimates
36 or evaluations made by or for a public agency relative to the acquisition
37 of property, prior to the award of formal contracts therefor.

38 (14) Correspondence between a public agency and a private individ-
39 ual, other than correspondence which is intended to give notice of an
40 action, policy or determination relating to any regulatory, supervisory or
41 enforcement responsibility of the public agency or which is widely dis-
42 tributed to the public by a public agency and is not specifically in response
43 to communications from such a private individual.

1 (15) Records pertaining to employer-employee negotiations, if dis-
2 closure would reveal information discussed in a lawful executive session
3 under K.S.A. 75-4319, and amendments thereto.

4 (16) Software programs for electronic data processing and documen-
5 tation thereof, but each public agency shall maintain a register, open to
6 the public, that describes:

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

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

11 (17) Applications, financial statements and other information sub-
12 mitted in connection with applications for student financial assistance
13 where financial need is a consideration for the award.

14
15 (18) Plans, designs, drawings or specifications which are prepared by
16 a person other than an employee of a public agency or records which are
17 the property of a private person.

18 (19) Well samples, logs or surveys which the state corporation com-
19 mission requires to be filed by persons who have drilled or caused to be
20 drilled, or are drilling or causing to be drilled, holes for the purpose of
21 discovery or production of oil or gas, to the extent that disclosure is limited
22 by rules and regulations of the state corporation commission.

23 (20) Notes, preliminary drafts, research data in the process of anal-
24 ysis, unfunded grant proposals, memoranda, recommendations or other
25 records in which opinions are expressed or policies or actions are pro-
26 posed, ~~except that~~. This exemption shall not apply when such records are
27 publicly cited or identified in an open meeting or in an agenda of an open
28 meeting.

29 (21) Records of a public agency having legislative powers, which re-
30 cords pertain to proposed legislation or amendments to proposed legis-
31 lation, ~~except that~~. This exemption shall not apply when such records are:

32 (A) Publicly cited or identified in an open meeting or in an agenda
33 of an open meeting; or

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

37 (22) Records of a public agency having legislative powers, which re-
38 cords pertain to research prepared for one or more members of such
39 agency, ~~except that~~. This exemption shall not apply when such records
40 are:

41 (A) Publicly cited or identified in an open meeting or in an agenda
42 of an open meeting; or

43 (B) distributed to a majority of a quorum of any body which has au-

1 thorty to take action or make recommendations to the public agency with
2 regard to the matters to which such records pertain.

3 (23) Library patron and circulation records which pertain to identi-
4 fiable individuals.

5 (24) Records which are compiled for census or research purposes and
6 which pertain to identifiable individuals.

7 (25) Records which represent and constitute the work product of an
8 attorney.

9 (26) Records of a utility or other public service pertaining to individ-
10 ually identifiable residential customers of the utility or service, ~~except~~
11 ~~that~~. Information concerning billings for specific individual customers
12 named by the requester shall be subject to disclosure as provided by this
13 act.

14 (27) Specifications for competitive bidding, until the specifications
15
16 are officially approved by the public agency.

17 (28) Sealed bids and related documents, until a bid is accepted or all
18 bids rejected.

19 (29) Correctional records pertaining to an identifiable inmate or re-
20 lease, except that:

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

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

36 (C) the information provided to the law enforcement agency pursu-
37 ant to the sex offender registration act, K.S.A. 22-4901, *et seq.*, and
38 amendments thereto, shall be subject to disclosure to any person, ~~except~~
39 ~~that~~. The name, address, telephone number or any other information
40 which specifically and individually identifies the victim of any offender
41 required to register as provided by the Kansas offender registration act,
42 K.S.A. 22-4901 *et seq.* and amendments thereto, shall not be disclosed;
43 and

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

6 (30) Public records containing information of a personal nature
7 where the public disclosure thereof would constitute a clearly unwar-
8 ranted invasion of personal privacy.

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

16
17 ~~(32) The bidder's list of contractors who have requested bid proposals~~
18 ~~for construction projects from any public agency, until a bid is accepted~~
19 ~~or all bids rejected.~~

Bidder's lists of contractors exception repealed.

20 ~~(33)~~ (32) Engineering and architectural estimates made by or for any
21 public agency relative to public improvements.

22 ~~(34)~~ (33) Financial information submitted by contractors in qualifi-
23 cation statements to any public agency.

24 ~~(35)~~ (34) Records involved in the obtaining and processing of intel-
25 lectual property rights that are expected to be, wholly or partially vested
26 in or owned by a state educational institution, as defined in K.S.A. 76-
27 711, and amendments thereto, or an assignee of the institution organized
28 and existing for the benefit of the institution.

29 ~~(36)~~ (35) Any report or record which is made pursuant to K.S.A. 65-
30 4922, 65-4923 or 65-4924, and amendments thereto, and which is privi-
31 leged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

32 ~~(37)~~ (36) Information which would reveal the precise location of an
33 archeological site.

34 ~~(38)~~ (37) Any financial data or traffic information from a railroad com-
35 pany, to a public agency, concerning the sale, lease or rehabilitation of
36 the railroad's property in Kansas.

37 ~~(39)~~ (38) Risk-based capital reports, risk-based capital plans and cor-
38 rective orders including the working papers and the results of any analysis
39 filed with the commissioner of insurance in accordance with K.S.A. 1999
40 Supp. 40-2c20, and amendments thereto.

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

1 ~~(41)~~ (40) Disclosure reports filed with the commissioner of insurance
2 under subsection (a) of K.S.A. 1999 Supp. 40-2,156, and amendments
3 thereto.

4 ~~(42)~~ (41) All financial analysis ratios and examination synopses con-
5 cerning insurance companies that are submitted to the commissioner by
6 the national association of insurance commissioners' insurance regulatory
7 information system.

8 ~~(43)~~ (42) Any records the disclosure of which is restricted or prohib-
9 ited by a tribal-state gaming compact.

10 ~~(44)~~ (43) Market research, market plans, business plans and the terms
11 and conditions of managed care or other third party contracts, developed
12 or entered into by the university of Kansas medical center in the operation
13 and management of the university hospital which the chancellor of the
14 university of Kansas or the chancellor's designee determines would give
15 an unfair advantage to competitors of the university of Kansas medical
16 center.

17
18 (b) Except to the extent disclosure is otherwise required by law or as
19 appropriate during the course of an administrative proceeding or on ap-
20 peal from agency action, a public agency or officer shall not disclose fi-
21 nancial information of a taxpayer which may be required or requested by
22 a county appraiser or the director of property valuation to assist in the
23 determination of the value of the taxpayer's property for ad valorem tax-
24 ation purposes; or any financial information of a personal nature required
25 or requested by a public agency or officer, including a name, job descrip-
26 tion or title revealing the salary or other compensation of officers, em-
27 ployees or applicants for employment with a firm, corporation or agency,
28 except a public agency. Nothing contained herein shall be construed to
29 prohibit the publication of statistics, so classified as to prevent identifi-
30 cation of particular reports or returns and the items thereof.

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

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

1 public agency shall not be required to disclose those portions of the record
2 which pertain to such individual or individuals.

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

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

12 New Sec. 12. (a) It is the intent of the legislature that exceptions to
13 disclosure under the open records act shall be created or maintained only
14 if:

15 (1) The public record is of a sensitive or personal nature concerning
16 individuals;

17 (2) the public record is necessary for the effective and efficient ad-
18 ministration of a governmental program; or

19 (3) the public record affects confidential information.

20 The maintenance or creation of an exception to disclosure must be
21 compelled as measured by these criteria. Further, the legislature finds
22 that the public has a right to have access to public records unless the
23 criteria in this section for restricting such access to a public record are
24 met and the criteria are considered during legislative review in connection
25 with the particular exception to disclosure to be significant enough to
26 override the strong public policy of open government. To strengthen the
27 policy of open government, the legislature shall consider the criteria in
28 this section before enacting an exception to disclosure.

29 (b) All exceptions to disclosure in existence on July 1, 2000, shall
30 expire on July 1, 2005, and any new exception to disclosure or substantial
31 amendment of an existing exception shall expire on July 1 of the fifth year
32 after enactment of the new exception or substantial amendment, unless
33 the legislature acts to reenact the exception. A law that enacts a new
34 exception or substantially amends an existing exception shall state that
35 the exception expires at the end of five years and that the exception shall
36 be reviewed by the legislature before the scheduled date.

37 (c) For purposes of this section, an exception is substantially amended
38 if the amendment expands the scope of the exception to include more
39 records or information. An exception is not substantially amended if the
40 amendment narrows the scope of the exception.

41 (d) This section is not intended to repeal an exception that has been
42 amended following legislative review before the scheduled repeal of the
43

Criteria for Legislature establishing or maintaining exceptions to open records require-
ment.

Five-year sunset on existing and all new exceptions.

Senate Elections & Local Government
Date: 3-28-00
Attachment # 1-17

1 exception if the exception is not substantially amended as a result of the
2 review.

3 (e) In the year before the expiration of an exception, the revisor of
4 statutes shall certify to the president of the senate and the speaker of the
5 house of representatives, by June 1, the language and statutory citation
6 of each exception which will expire in the following year which meets the
7 criteria of an exception as defined in this section. Any exception that is
8 not identified and certified to the president of the senate and the speaker
9 of the house of representatives is not subject to legislative review and
10 shall not expire. If the revisor of statutes fails to certify an exception that
11 the revisor subsequently determines should have been certified, the re-
12 visor shall include the exception in the following year's certification after
13 that determination.

14 (f) "Exception" means any provision of law which creates an excep-
15 tion to disclosure or limits disclosure under the open records act pursuant
16 to K.S.A. 45-221, and amendments thereto, or pursuant to any other
17 provision of law.

18 (g) A provision of law which creates or amends an exception to dis-
19 closure under the open records law shall not be subject to review and
20 expiration under this act if such provision:

- 21 (1) Is required by federal law;
- 22 (2) applies solely to the legislature or to the state court system.
- 23 (h) (1) The legislature shall review the exception before its scheduled
24 expiration and consider as part of the review process the following:
25 (A) What specific records are affected by the exception;
- 26 (B) whom does the exception uniquely affect, as opposed to the gen-
27 eral public;
- 28 (C) what is the identifiable public purpose or goal of the exception;
- 29 (D) whether the information contained in the records may be ob-
30 tained readily by alternative means and how it may be obtained;

31 (2) An exception may be created or maintained only if it serves an
32 identifiable public purpose and may be no broader than is necessary to
33 meet the public purpose it serves. An identifiable public purpose is served
34 if the legislature finds that the purpose is sufficiently compelling to over-
35 ride the strong public policy of open government and cannot be accom-
36 plished without the exception and if the exception:

- 37 (A) Allows the effective and efficient administration of a govern-
38 mental program, which administration would be significantly impaired
39 without the exception;
- 40 (B) protects information of a sensitive personal nature concerning
41 individuals, the release of which information would be defamatory to such
42 individuals or cause unwarranted damage to the good name or reputation
43

Exemptions not subject to review.

1 of such individuals or would jeopardize the safety of such individuals.
2 Only information that would identify the individuals may be excepted
3 under this paragraph; or

4 (C) protects information of a confidential nature concerning entities,
5 including, but not limited to, a formula, pattern, device, combination of
6 devices, or compilation of information which is used to protect or further
7 a business advantage over those who do not know or use it, the disclosure
8 of which information would injure the affected entity in the marketplace.

9 (3) Records made before the date of the expiration of an exception
10 shall be subject to disclosure as otherwise provided by law. In deciding
11 whether the records shall be made public, the legislature shall consider
12 whether the damage or loss to persons or entities uniquely affected by
13 the exception of the type specified in paragraph (2)(B) or (2)(C) of this
14 subsection (h) would occur if the records were made public.

15 Sec. 13. K.S.A. 45-222 is hereby amended to read as follows: 45-222.

16 (a) ~~Any person, the~~ **[The]** attorney general or a county or district attorney
17 may bring an action to enforce the provisions of this act pursuant to this
18 section ~~or may file a complaint pursuant to section 2, and amendments~~
19 ~~thereto, with the public information officer.~~ The district court of any

20
21 county in which public records are located shall have jurisdiction to en-
22 force the purposes of this act with respect to such records, by injunction,
23 mandamus or other appropriate order, in an action brought by any person,
24 the attorney general or a county or district attorney.

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

28 (c) In any action hereunder, the court may award attorney fees to the
29 plaintiff if the court finds that the agency's denial of access to the public
30 record was not in good faith and without a reasonable basis in fact or law.
31 *If the plaintiff prevails in any such action, the court shall [may] award*
32 *attorney fees when an opinion has been issued by the public information*
33 *officer and the public agency fails to comply with the opinion.* The award
34 shall be assessed against the public agency that the court determines to
35 be responsible for the violation.

36 (d) In any action hereunder in which the defendant is the prevailing
37 party, the court may award to the defendant attorney fees if the court
38 finds that the plaintiff maintained the action ~~not in good faith and~~ **[friv-**
39 **olously, in bad faith or]** without a reasonable basis in fact or law.

40 (e) Except as otherwise provided by law, proceedings arising under
41 this section shall be assigned for hearing and trial at the earliest practi-
42 cable date.

43 **[(f) Any person may file a complaint pursuant to section 1, and**

Only Attorney General or local prosecutor may file action directly in district court.

Attorney's fees may be awarded to plaintiff.

Attorney's fees may be awarded to public agency.

Any person may file a complaint under administrative procedure pursuant to Section 2—technical amendment.

amendments thereto, with the public information officer. Any proceedings on such complaint shall be conducted in accordance with section 1, and amendments thereto.]

Sec. 14. K.S.A. 45-223 is hereby amended to read as follows: 45-223.

(a) Except as provided by subsection (b) [of this section or subsection (c) of section 12], no public agency nor any officer or employee of a public agency shall be liable for damages or other penalty resulting from the failure to provide access to a public record in violation of this act.

(b) A civil penalty not to exceed \$500 may be imposed against a public agency if the custodian of such agency fails to disclose or orders the custodian not to disclose a record not exempt from disclosure. All moneys received pursuant to this section shall be remitted to the state treasurer. The state treasurer shall deposit such moneys in the state treasury as provided in section 5, and amendments thereto.

~~New Sec. 15. All records relating to the use of public moneys received by any private entity or organization shall be subject to disclosure to the same extent such records would be subject to disclosure if such entity or organization was a public agency.~~

[New Sec. 15. (a) The attorney general and any county or district attorney may investigate alleged violations of the open records act.

[(b) In investigating alleged violations of the open records act, the attorney general or county or district attorney may:

[(1) Subpoena witnesses, evidence, documents or other material;

[(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.

[New Sec. 16. (a) Any records described in subsection (b) of a private organization or entity shall not be subject to the provisions of the open records act.

[(b) The provisions of subsection (a) shall apply to the following:

[(1) Balance sheets;

[(2) statements of financial position;

[(3) income statements;

[(4) statements of profit and loss;

[(5) cash flow statements;

Civil penalty of not to exceed \$500 may be assessed against public agency.

Disclosure by private entities deleted.

Prosecutor investigative powers under KORA.

Private entity records not subject to disclosure.

- 1 [(6) statements of change in financial position;
- 2 [(7) statements of change in retained earnings; or
- 3 [(8) federal or state income tax returns.

4 [New Sec. 17. (a) The attorney general and any county or district attorney may investigate alleged violations of the open records act.

5
6
7 [(b) In investigating alleged violations of the open records act, the attorney general or county or district attorney may:

8 [(1) Subpoena witnesses, evidence, documents or other material;

9 [(2) take testimony under oath;

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

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

12 [(5) serve interrogatories.

13 [New Sec. 18. If there is an alleged violation of the open records act by the attorney general or if the attorney general fails to disclose a public record which is not exempt from disclosure under the open records act or any other provision of law, the secretary

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23 of state shall have the same powers, duties and functions of a county or district attorney to investigate an alleged violation of the open records act by the attorney general and to file an action to compel the attorney general to disclose any public record not disclosed in violation of such act and to otherwise enforce such act against the attorney general.]

24 Sec. 46: [19.] K.S.A. 1999 Supp. 75-4317 is hereby amended to read as follows: 75-4317. (a) K.S.A. 75-4317 through 75-4320a [and section 21 and section 22], and amendments thereto, shall be known and may be cited as the open meetings act.

25 (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.

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Prosecutor investigative powers under KORA—technical amendment.

Secretary of State to investigate and to prosecute Attorney General KORA violations.

Open meeting statement of purpose expanded.

liberally to protect and encourage the public's right of access to the process of government through open public meetings.

(c) K.S.A. 75-4317 through 75-4320a shall be known and may be cited as the open meetings act.

Sec. 47: [20.] K.S.A. 75-4317a is hereby amended to read as follows: 75-4317a. (a) As used in this act, "meeting":

(a) "Meeting" means any gathering, assembly, telephone call or any other means of interactive communication by a majority of a quorum of the membership of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency.

(b) "Public information officer" means the public access officer appointed pursuant to section 1, and amendments thereto.

Sec. 48: [21.] K.S.A. 75-4318 is hereby amended to read as follows: 75-4318. (a) Except as otherwise provided by state or federal law or by rules of the house or senate, and except with respect to any impeachment inquiry or other impeachment matter referred to any committee of the house of representatives prior to the report of such committee to the full house of representatives, all meetings for the conduct of the affairs of, and the transaction of business by, all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards, commissions, authorities, councils, committees, sub-committees and other subordinate groups thereof, receiving or expending

and supported in whole or in part by public funds shall be open to the public and no binding action by such bodies shall be by secret ballot, but any administrative body that is authorized by law to exercise quasi-judicial functions shall not be required to have open meetings when such body is deliberating matters relating to a decision involving such quasi-judicial functions.

(b) Notice of the date, time and place of any regular or special meeting of a public body designated hereinabove shall be furnished to any person requesting such notice, except that:

(1) If notice is requested by petition, the petition shall designate one person to receive notice on behalf of all persons named in the petition, and notice to such person shall constitute notice to all persons named in the petition;

(2) if notice is furnished to an executive officer of an employees' organization or trade association, such notice shall be deemed to have been furnished to the entire membership of such organization or association; and

(3) the public body may require that a request to receive notice must be submitted again to the body prior to the commencement of any subsequent fiscal year of the body during which the person wishes to continue

Liberal construction.

Definition Public Information Officer.

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1 receiving notice, but, prior to discontinuing notice to any person, the
2 public body must notify the person that notice will be discontinued unless
3 the person resubmits a request to receive notice.

4 (c) It shall be the duty of the presiding officer or other person calling
5 the meeting, if the meeting is not called by the presiding officer, to furnish
6 the notice required by subsection (b).

7 (d) Prior to any meeting hereinabove mentioned, any agenda relating
8 to the business to be transacted at such meeting shall be made available
9 to any person requesting said agenda.

10 (e) The use of cameras, photographic lights and recording devices
11 shall not be prohibited at any meeting mentioned by subsection (a), but
12 such use shall be subject to reasonable rules designed to insure the or-
13 derly conduct of the proceedings at such meeting.

14 (f) Any body or agency subject to the provisions of the open meetings
15 act shall display **[at the regular meeting site or location] a sign a**
16 **conspicuous place at the principal office of the body or agency a**
17 **notice] that contains basic information about the rights of the public, the**
18 **responsibilities of such body or agency and the procedures for requesting**
19 **notice of public meetings under the open meetings act. Such sign shall**
20 **conform to the requirements prescribed by the public information officer.**

21 Sec. ~~49~~: **[22.]** K.S.A. 1999 Supp. 75-4319 is hereby amended to read
22 as follows: 75-4319. (a) Upon formal motion made, seconded and carried,
23 all bodies and agencies subject to the open meetings act may recess, but
24

25 not adjourn, open meetings for closed or executive meetings. Any motion
26 to recess for a closed or executive meeting shall include a statement of
27 (1) the justification for closing the meeting, (2) the subjects to be dis-
28 cussed during the closed or executive meeting and (3) the time and place
29 at which the open meeting shall resume. Such motion, including the re-
30 quired statement, shall be recorded in the minutes of the meeting and
31 shall be maintained as a part of the permanent records of the body or
32 agency. Discussion during the closed or executive meeting shall be limited
33 to those subjects stated in the motion.

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

36 ~~(1) Personnel matters of Hiring, termination of employment and em-~~
37 ~~ployee disciplinary matters of individual~~ **[Personnel matter]** nonelected
38 **personnel;**

39 **[(1) The following matters relating to individual nonelected**
40 **personnel: Hiring, termination of employment and other forms of**
41 **discipline, performance evaluations and complaints and griev-**
42 **ances against such personnel;]**

43 (2) consultation with an attorney for the body or agency which would

Notice of rights under KOMA to be displayed.

KOMA Executive Session.

Personnel matters exception narrowed.

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1 be deemed privileged in the attorney-client relationship;

2 (3) matters relating to employer-employee negotiations whether or
3 not in consultation with the representative or representatives of the body
4 or agency[. **This subsection shall not apply to discussions concerning
5 the election of a public agency to be subject to the provisions of
6 K.S.A. 75-4321 et seq., and amendments thereto**];

7 (4) confidential data relating to financial affairs or trade secrets of
8 corporations, partnerships, trusts, and individual proprietorships;

9 (5) matters relating to actions adversely or favorably affecting a per-
10 son as a student, patient or resident of a public institution, except that
11 any such person shall have the right to a public hearing if requested by
12 the person;

13 (6) preliminary discussions relating to the acquisition of real property;

14 (7) matters permitted to be discussed in a closed or executive meeting
15 pursuant to K.S.A. 74-8804, and amendments thereto;

16 (8) matters permitted to be discussed in a closed or executive meeting
17 pursuant to subsection (e) of K.S.A. 38-1507 ~~and amendments thereto~~ or
18 subsection (f) of K.S.A. 38-1508, and amendments thereto;

19 (9) matters permitted to be discussed in a closed or executive meeting
20 pursuant to subsection (j) of K.S.A. 22a-243, and amendments thereto;

21 (10) matters permitted to be discussed in a closed or executive meet-
22 ing pursuant to subsection (e) of K.S.A. 44-596, and amendments thereto;

23 (11) matters permitted to be discussed in a closed or executive meet-
24 ing pursuant to subsection (g) of K.S.A. 1999 Supp. 39-7,119, and amend-

25 ments thereto;

26 (12) matters required to be discussed in a closed or executive meeting
27 pursuant to a tribal-state gaming compact; and

28 (13) matters relating to the security of a public body or agency, public
29 building or facility or the information system of a public body or agency,
30 if the discussion of such matters at an open meeting would jeopardize
31 the security of such public body, agency, building, facility or information
32 system.
33

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

37 (d) ~~Closed [Except to the extent that the attorney client or at-
38 torney work product privilege applies, closed] or executive meetings
39 shall be taped or otherwise recorded. [The taping or recording of a
40 closed or executive session shall not constitute a waiver of the at-
41 torney client privilege if the matter is discussed in closed or ex-
42 ecutive meeting pursuant to paragraph (2) of subsection (b).] Ex-
43 cept as provided by K.S.A. 75-4320a or section 2, and amendments~~

Employer-Employee negotiations exception amended—PEER act election exc

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~~thereto, such tape or recording shall not be subject to disclosure or discovery in a civil or criminal action. Any tape or recording of a closed or executive meeting shall be kept for at least six months following the date of such meeting. Such tape or recording shall not be erased, edited or destroyed if a complaint has been filed alleging a violation of the open meetings act [or] until time for filing a complaint and any hearing thereon or appeal thereof has expired. [No closed or executive meeting shall be taped or otherwise recorded.]~~

No tapes allowed at executive sessions.

Sec. 20: ~~[23.]~~ K.S.A. 75-4320 is hereby amended to read as follows:
75-4320. (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, and amendments thereto, 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)~~ \$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 within ~~ten (10)~~ 10 days of the meeting, and the court shall have jurisdiction to issue injunctions or writs of mandamus to enforce the provisions of this act.

Civil penalty to fund created in Section 5.

(b) Civil penalties sued for and recovered hereunder by the attorney general or the public information officer shall be ~~paid into the state general fund~~ remitted to the state treasurer. The state treasurer shall deposit

such moneys in the state treasury as provided in section 5, and amendments thereto. 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.

Attorney General and local prosecutors may bring action directly in district court.

Sec. 21: ~~[24.]~~ K.S.A. 75-4320a is hereby amended to read as follows:
75-4320a. (a) ~~Any person, the [The] attorney general or a county or district attorney may bring an action to enforce the provisions of this act pursuant to this section or may file a complaint pursuant to section 2, and amendments thereto, with the public information officer.~~ The district court of any county in which a meeting is held shall have jurisdiction to enforce the purposes of K.S.A. 75-4318 and 75-4319, and amendments thereto, with respect to such meeting, by injunction, mandamus or other appropriate order, on application of any person.

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

~~(c) In any action hereunder for violations of K.S.A. 75-4319, and amendments thereto, the court on its own motion, or on the motion of the~~

1 person seeking enforcement of the provisions of K.S.A. 75-4319, and
2 amendments thereto, may review, in camera, the tape or recording of the
3 closed or executive meeting which is the subject of such action. After such
4 review, if the court finds that a violation has occurred, that portion of
5 such tape or recording of the closed or executive session which should
6 have been open shall be open for public inspection.

7 (e) ~~(d)~~ [(c)] In any action hereunder, the court may award court costs
8 to the person seeking to enforce the provisions of K.S.A. 75-4318 or 75-
9 4319, and amendments thereto, if the court finds that the provisions of
10 those statutes were violated. ~~The award~~ If the person seeking to enforce
11 the provisions of K.S.A. 75-4318 or 75-4319, and amendments thereto,
12 prevails, the court shall [may] award attorney fees when an [advisory]
13 opinion has been issued by the public information officer and the public
14 body or agency fails to comply with the opinion. Such awards shall be
15 assessed against the public agency or body responsible for the violation.

16 ~~(d)~~ (e) [(d)] In any action hereunder in which the defendant is the
17 prevailing party, the court may award to the defendant court costs if the
18 court finds that the plaintiff maintained the action frivolously, not in good
19 [bad] faith or without a reasonable basis in fact or law.

20 (e) ~~(f)~~ [(e)] Except as otherwise provided by law, proceedings arising
21 under this section shall take precedence over all other cases and shall be
22 assigned for hearing and trial at the earliest practicable date.

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

25 ~~(g)~~ [(f)] Any body or agency which conducts a meeting in compliance
26 with an [advisory] opinion issued by the public information officer shall
27
28 not be liable for the payment of a fine, penalty or other fee in any hearing
29 before a court or in any subsequent appeal from such hearing.

30 [(g) Any person may file a complaint pursuant to section 1, and
31 amendments thereto, with the public information officer. Any pro-
32 ceedings on such complaint shall be conducted in accordance with
33 section 1, and amendments thereto.

34 [(h) For the purposes of this section, the term public infor-
35 mation officer means the public access officer appointed pursuant
36 to section 1, and amendments thereto.

37 [New Sec. 25. (a) The attorney general and any county or dis-
38 trict attorney may investigate alleged violations of the open meet-
39 ings act.

40 [(b) In investigating alleged violations of the open meetings
41 act, the attorney general or county or district attorney may:

42 [(1) Subpoena witnesses, evidence, documents or other
43 material;

Attorney's fees permitted when public agency ignores advisory opinion.

Public entity not subject to fine or attorney fees if follow advisory opinion.

Any person can file KOMA complaint under Section 1—technical amendment.

Prosecutor KOMA investigative powers.

1 **[(2) take testimony under oath;**
2 **[(3) examine or cause to be examined any documentary mate-**
3 **rial of whatever nature relevant to such alleged violations;**
4 **[(4) require attendance during such examination of documen-**
5 **tary material and take testimony under oath or acknowledgment**
6 **in respect of any such documentary material; and**
7 **[(5) serve interrogatories.**
8 **[New Sec. 26. (a) The attorney general and any county or dis-**
9 **trict attorney may investigate alleged violations of the open re-**
10 **ords act.**
11 **[(b) In investigating alleged violations of the open records act,**
12 **the attorney general or county or district attorney may:**
13 **[(1) Subpoena witnesses, evidence, documents or other**
14 **material;**
15 **[(2) take testimony under oath;**
16 **[(3) examine or cause to be examined any documentary mate-**
17 **rial of whatever nature relevant to such alleged violations;**
18 **[(4) require attendance during such examination of documen-**
19 **tary material and take testimony under oath or acknowledgment**
20 **in respect of any such documentary material; and**
21 **[(5) serve interrogatories.]**
22 Sec. ~~22~~ **[27.]** K.S.A. 45-215, 45-218, 45-220, 45-222, 45-223, 75-
23 4317a, 75-4318, 75-4320 and 75-4320a and K.S.A. 1999 Supp. 45-217,
24 45-219, 45-221, 75-4317 and 75-4319 are hereby repealed.
25 Sec. ~~23~~ **[28.]** This act shall take effect and be in force from and after
26 its publication in the statute book.

Prosecutor KORA investigative powers.

Senate Elections & Local Government
Date: 3-28-00
Attachment # 1-27

February 3, 2000

KANSAS OPEN RECORDS ACT

45-215. Title of act. KSA 45-215 through 45-223 shall be known and may be cited as the open records act.

45-216. Public policy that records be open.

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

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

45-217. Definitions. As used in the open records act, unless the context otherwise requires:

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

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

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

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

(e) (1) "Public agency" means the state or any political or taxing subdivision of the state or any office, officer, agency or instrumentality thereof, or any other entity receiving or

expending and supported in whole or in part by the public funds appropriated by the state or by public funds of any political or taxing subdivision of the state.

(2) "Public agency" shall not include:

(A) Any entity solely by reason of payment from public funds for property, goods or services of such entity; (B) any municipal judge, judge of the district court, judge of the court of appeals or justice of the supreme court; or (C) any officer or employee of the state or political or taxing subdivision of the state if the state or political or taxing subdivision does not provide the officer or employee with an office which is open to the public at least 35 hours a week.

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

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

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

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

45-218. Inspection of records; request; response; refusal, when; fees.

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

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

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

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

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

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

45-219. Abstracts or copies of records; fees. (a) Any person may make abstracts or obtain copies of any public record to which such person has access under this act. If copies are requested, the public agency may require a written request and advance payment of the prescribed fee. A public agency shall not be required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices, unless such items or devices were shown or played to a public meeting of the governing body thereof, but the public agency shall not be required to provide such items or devices which are copyrighted by a person other than the public agency.

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

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

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

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

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

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

(5) Fees for access to or copies of public records of a public agency within the executive branch of the state government shall be established by the agency head. Any person requesting records may appeal the reasonableness of the fees charged for providing access to or furnishing copies of such records to the secretary of administration whose decision shall be final. A fee for copies of public records which is equal to or less than \$.25 per page shall be deemed a reasonable fee.

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

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

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

45-220. Procedures for obtaining access to or copies of records; request; office hours; provision of information on procedures. (a) Each public agency shall adopt procedures to be followed in requesting access to and obtaining copies of public records, which procedures shall provide full access to public records, protect public records from damage and disorganization, prevent excessive disruption of the agency's essential functions, provide assistance and information upon request and insure efficient and timely action in response to applications for inspection of public records.

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

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

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

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

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

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

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

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

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

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

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

45-221. Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.

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

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

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

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual.

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

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

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

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

(A) Is in the public interest;

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

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public;

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

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

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

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

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

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

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under KSA 75-4319, and amendments thereto.

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

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

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

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

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

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

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

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

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

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

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

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

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

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

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

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

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

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

(C) the information provided to the law enforcement agency pursuant to the sex offender registration act, KSA 22-4901, *et seq.*, and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, KSA 22-4901 *et seq.* and amendments thereto, shall not be disclosed; and

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

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

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

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

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

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

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

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

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

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

(39) Risk-based capital reports, risk-based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with KSA 1999 Supp. 40-2c20, and amendments thereto.

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

(41) Disclosure reports filed with the commissioner of insurance under subsection (a) of KSA 1999 Supp. 40-2,156, and amendments thereto.

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

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

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

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

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

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act.

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

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

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

45-222. Civil remedies to enforce act. (a) The district court of any county in which public records are located shall have jurisdiction to enforce the purposes of this act with respect to such records, by injunction, mandamus or other appropriate order, in an action brought by any person, the attorney general or a county or district attorney.

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

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

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

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

45-223. No liability for damages for violation of act. No public agency nor any officer or employee of a public agency shall be liable for damages resulting from the failure to provide access to a public record in violation of this act.

45-224. Continuation of fees and procedures adopted under prior act. All fees, schedules of times for making of copies, hours during which public records may be

inspected or copies obtained, procedures for requesting access to or obtaining copies of public records or other policies or procedures which were prescribed or adopted by any public agency pursuant to chapter 171 of the session laws of 1983, insofar as the same are authorized or in accordance with the provisions of this act, shall constitute the fees, schedules, hours and policies or procedures of such public agency for the purposes of this act until changed, modified or revoked by the public agency in accordance with the provisions of this act.

45-225. Severability of provisions. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and, to this end, the provisions of this act are severable.

SESSION OF 2000

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE
FOR HOUSE BILL NO. 2864**

As Amended by House Committee of the Whole

Brief*

House Sub. for HB 2864 makes major amendments to the Kansas Open Records Act (KORA) and the Kansas Open Meetings Act (KOMA) as follows.

Public Information Officer. The bill establishes the position of public information officer within the Attorney General's Office. Duties of the officer include: to prepare and provide educational materials concerning both laws; to assist in resolving disputes between public agencies and members of the public; to respond to inquiries; to issue advisory opinions; to establish content criteria for signs (notices) required to be posted under both laws; to conduct formal hearings to resolve disputes for both laws under the Kansas Administrative Procedure Act; to determine the reasonableness of fees charged for records; and to adopt rules and regulations. The public information officer shall not be subject to any action for failure to act or for performing any duties under this act, KORA, and KOMA.

Administrative Procedures for Complaints. Any county or district attorney, or any person aggrieved by an alleged violation of either act may bring an action before the public information officer within 45 days of the alleged violation. Hearings shall be conducted in accord with the Kansas Administrative Procedure Act. The public information officer may review records in camera in any action but this review shall be subject to the provisions of the lawyer-client privilege. The public information officer must render a decision within 45 days of the date on which an answer to the complaint is filed unless the parties otherwise agree.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at http://www.ink.org/public/legislative/bill_search.html

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Appeals may be taken under the Act for Judicial Review and Civil Enforcement of Agency Actions. The public information officer may assess a civil fine of not to exceed \$500 for violations of either law and may assess costs against the parties to the proceeding.

Advisory Opinions. At the request of any person, the public access officer may issue advisory opinions relating to KOMA and KORA and the enforcement thereof. The public access officer shall cause to be published on the Internet and otherwise opinions, decisions, orders, and related materials issued or provided by the public access officer.

District Court, Attorneys Fees, Civil Penalties, Enforcement Fund. A complaint under KORA or KOMA may be filed by the Attorney General or county or district attorney in district court without undergoing the administrative procedure. (The Attorney General may not use the administrative procedure.) The district court may award attorneys fees to the complaining party when an advisory opinion has been issued by the public information officer and the public agency fails to comply and may impose a civil fine of not to exceed \$500. Further, attorney fees may be awarded to the defendant for frivolous or bad faith actions or when there is no reasonable basis for the suit.

A civil penalty not to exceed \$500 may be imposed against a public agency if the public records custodian of the agency fails to disclose a record not exempt from disclosure. Any civil penalty shall be paid into the State General Fund and shall be made available to the public access officer to assist in financing expenditures to provide educational information to public agencies and to the public concerning the provisions of KORA. KOMA is amended to provide civil penalties (available under current law) awarded under that law shall be used for the same purpose as noted above.

An open records and open meetings enforcement fund is created in the State Treasury. All moneys from fines and penalties are to be paid into this fund. Moneys are to be used for educational purposes.

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Informal Procedure. The public information officer is authorized to establish an informal procedure for resolution of disputes relating to alleged violation of both laws.

Open Records Sunset of Exemption; Other Changes. All existing exceptions to KORA would sunset in five years (July 1, 2005), except Exception No. 32 dealing with lists of contract bidders which is repealed. Further, criteria is established which the Legislature must consider when enacting new exceptions to the KORA and each new exception is subject to a five-year sunset.

Time Frame for Records Production. If the records are on site, the request must be processed at the time the request is received. If the public record is not on-site, the records shall be retrieved not later than the end of the third business day following the date that the request is received. If the record must be constructed and prepared, the record shall be available not later than the end of the seventh business day following the date that the request is received.

Notice Listing Rights Under KORA and KOMA Required. Notice listing the rights of records requestors and responsibilities of public agencies under KORA must be displayed at the central administrative office in a conspicuous place at the principal office of the body or agency by public agencies. Further, signs listing the rights of the public and responsibilities of public bodies under KOMA also must be displayed.

Tapes of Executive Sessions Prohibited; Personnel Exception Narrowed; Employer-Employee Exception Amended. Closed or executive meetings shall not be taped or otherwise recorded.

The discussion of personnel matters exception permitting an executive session of a public body is narrowed to permit an executive session to discuss only hiring, termination, discipline, or performance evaluations and complaints and grievances against personnel.

The employer-employee negotiations exception is amended to provide this exception may not be used to discuss the election of a public agency, to come with provisions of the Public Employer-Employee Relations Act (PEER).

3-2864

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Private Entity Records. Records of any private entity or organization shall not be subject to disclosure. Specifically mentioned among other items that are not to be disclosed are balance sheets, income statements, and federal income tax statements.

Investigative Powers of the Attorney General and Local Prosecutors (KORA and KOMA). Investigative powers of prosecutors are listed to include among others: subpoena witnesses, take testimony under oath, and serve interrogatories.

Attorney General's Office Subject of Open Records Complaint. The duty to investigate and prosecute Attorney General violations of KORA is placed with the Secretary of State (Section 18).

Background

The House Local Government Committee held hearings over a period of weeks on the issue of amending the KORA and the KOMA.

Both the Governor's Office and the Kansas Attorney General's Office supported various amendments to the KORA and KOMA incorporated in HB 2864. Others who supported changes to the law included the House Minority Leader, the Senate Minority Leader, several other legislators, representatives of the Kansas Press Association, the Kansas Association of Broadcasters, the *Wichita Eagle*, the *Emporia Gazette*, the *Kansas City Star*, the *Kansas City Kansan*, the Kansas Sunshine Coalition for Open Government, a property appraiser, and several citizens.

Those who appeared before the Committee expressing the belief that the current law was adequate and that no changes were needed, included the Kansas Association of School Boards, League of Kansas Municipalities, the Kansas Association of Counties, the Kansas Peace Officers Association, the Kansas Sheriff's Association, the Kansas County Clerks Association, the cities of Wichita and Overland Park, and the Wichita Public schools.

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The House Committee of the Whole made the following amendments:

- Deleted a proposed requirement that records of a private entity or organization dealing with the use of public funds be open and specifically provided records of private entities are not subject to disclosure under KORA (New Section 16).
- Deleted a proposed requirement that executive sessions of open meetings be taped and added instead a prohibition against taping. (Section 22)
- Deleted a provision that would have allowed the Attorney General to bring an action before the public hearing officer. (New Section 2)
- Deleted the ability of any aggrieved person under current law to file a lawsuit under KORA and KOMA directly in district court and required instead that individuals must utilize the new administrative procedure before the public information officer. (Sections 13 and 24)
- Deleted the requirement under both laws and made it permissive that a court order a public agency to pay attorney fees if the public agency refused to follow an advisory opinion and deleted a provision prohibiting the award of attorney fees or imposition of a civil fine against a public entity that followed an advisory opinion under KORA. (Sections 2 and 24)
- Returned the standard for refusing a records request believed to be an unreasonable burden or disruption from clear and convincing to preponderance of the evidence. (Section 8)
- Changed the requirements regarding timing of responding to records access. (Section 8)
- Required posted notice instead of posted signs regarding rights and responsibilities under KORA and KOMA and clarified where the notices must be placed. (Sections 10 and 21)

5-2864

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- Added the requirement the Secretary of State investigate and prosecute alleged violations of KORA by the Attorney General. (Section 18)
- Amended the personnel and employee-employer negotiation executive session provisions of KOMA. (Section 22)
- Made the ability of the public information officer to review records in camera subject to the attorney-client privilege. (Section 2)
- Deleted the ability of the public information officer to award attorneys fees.

The fiscal note for HB 2864, as introduced, reported that the Attorney General's Office estimates the bill would require \$226,200 for FY 2001 and \$211,200 thereafter, based on the assumption of 3.0 FTE positions. The Division of the Budget, however, estimated a \$134,300 expenditure for the first year and an annual cost of \$119,300 thereafter.

6-2864

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Attachment # 3-6

March 28, 2000

To: Senate Committee on Elections and Local Government
From: Mike Heim, Principal Analyst
Re: Sub. for HB 2864 as Amended by the House Committee of the Whole

The following are the major provisions of Substitute for HB 2864 as it passed the House.

1. The bill creates a new position, Public Information Officer, and creates a new administrative procedure for bringing alleged violation of open records/open meetings acts. The Attorney General cannot use the administrative procedure, local prosecutors may use it, and all other persons must use it.
2. The Public Information Officer is authorized to establish informal procedures for resolving disputes and is authorized to issue advisory opinions.
3. A five-year sunset is established for all current open records exceptions and for all future exceptions to be enacted. The exception dealing with bidder lists is repealed.
4. Open meeting executive sessions cannot be taped and the personnel and employer-employee relations reasons for executive session are narrowed.
5. Alleged violations of the Kansas Open Records Act by the Attorney General must be investigated and prosecuted by the Secretary of State.
6. There are various technical problems with the bill as it now appears. For example, Sections 15, 17, and 26 appear to be identical and, therefore, at least two sections are redundant. See lines 29 to 32 and lines 38 to 40 on page 3—the latter is redundant. See also line 4 on page 19, where several lines of current law are missing. There are other technical problems, as well.

Testimony on Substitute for HB 2864
Tuesday, March 28, 2000
Ned Valentine, Publisher
Clay Center Dispatch

My name is Ned Valentine. I am the editor and publisher of the Clay Center Dispatch and our company also publishes the Washington County News. As a fourth-generation Kansas editor, I have pretty much worked in the newspaper business all my life.

I know that access to government is critical for our industry – but more importantly, open government is critical for a sense of community.

In my 30 years of reporting on community public affairs, I've noticed one outstanding trend—less and less citizen access to the affairs of their local government. That is why I have asked to be here today.

The trend has been slow erosion, the result of numerous minor legislative decisions such as those you are being asked to make today. With the trend has come, not citizen outrage, but greater public cynicism and apathy.

We don't have a lot of open records and open meeting disputes in our small communities. I have served on boards and task forces that discuss sensitive issues such as economic development. It is probably fair to say those groups didn't violate the open meetings laws while I served on the groups.

That is not to say some of our local officials haven't fudged on the law from time to time. Whenever possible, elected officials try to soften conflict. What they can handle quietly seems to be a preference. Of course, in our community and since our newspaper is part of that community, we hear about such secret discussion and I write editorials about those issues.

I believe public debate is good for the community. It helps us make better decisions.

As a past president of the Kansas Press Association, I know from talking with other publishers and editors, the philosophy of open government is sometimes better and sometimes worse than in Clay and Washington counties.

In some communities, the publisher serves on the city commission or school board. In some communities, local elected officials try to keep things quiet. Usually, when that happens, the strategy backfires – not just because of media coverage – but because of citizen outrage.

Our papers aren't big on investigative reporting. We can't afford it. We do rely on public records to confirm information and to give our readers, your constituents, better insight. Again, in our communities, probably some of the records that could be closed, are made available to us. But in other communities, delay and denial are not uncommon. And quite frankly, the media representative usually has easier access than a citizen who is seeking a record for the first time.

The open records and open meetings laws need to be improved, not watered down. Once there is good law, then maybe we can work on the spirit of the law, where members of the legislature look at these issues from the eyes of the average citizen or local officials truly believe they are helping the process rather than hiding government action.