

## MINUTES OF THE HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 P.M. on March 14, 2006 in Room 519-S of the Capitol.

All members were present.

## Committee staff present:

Mike Heim, Legislative Research Department  
 Martha Dorsey, Legislative Research Department  
 Theresa Kiernan, Revisor of Statutes Office  
 Maureen Stinson, Committee Secretary

## Conferees appearing before the committee:

Brad Smoot, First American Title Company  
 Doug Anstaett, Kansas Press Association  
 Bill Meek, Sedgwick County Register of Deeds  
 Cynthia Dunham, Johnson County Board of County Commissioners  
 Judy Moler, Kansas Association of Counties

## Others attending:

See attached list.

Chairman Vickrey opened the hearing on:

**HB 3001**      **Defining the phrase clearly unwarranted invasion of personal privacy for purposes of open records act**

Brad Smooth, First American Title Company, testified in support of the bill (Attachment 1). He said the proposed legislation would restore the uniformity and predictability that was intended by the Kansas Open Records Act.

Doug Anstaett, Kansas Press Association, testified in support of the bill (Attachment 2). He proposed an amendment prohibiting the use of Social Security numbers as a method of identifying an individual in a public record required to be open under the Kansas Open Records Act.

Bill Meek, Sedgwick County Register of Deeds, testified in opposition to the bill (Attachment 3). He said the proposed legislation, if enacted, would reverse the Kansas Supreme Court decision in a case where he was a defendant.

Cynthia Dunham, appeared on behalf of the Board of County Commissioners of Johnson County. She testified in opposition to the bill (Attachment 4). She said the proposed legislation, if enacted, would negatively impact the personal privacy of Kansas citizens because it would mandate the disclosure of highly personal information contained in records filed with county registers of deeds.

Judy Moler, testified in opposition to the bill (Attachment 5). She said local government is interested in retaining the ability to keep information private when necessary to protect its citizens.

Larry Baer, League of Kansas Municipalities, submitted written testimony in opposition to the bill (Attachment 6).

Chairman Vickrey closed the hearing on **HB 3001**.

**SB 499**      **Re-authorization of certain exceptions to KORA**

Rep. Sawyer made a motion for the favorable passage of SB 499. Rep. Lane seconded the motion.

Rep. Lane made a motion to amend the contents of HB 3001 into SB 499. Rep. Sawyer seconded the motion. Motion to amend the contents of HB 3001 into SB 499 failed.

CONTINUATION SHEET

MINUTES OF THE House Governmental Organization and Elections Committee at 3:30 P.M. on March 14, 2006 in Room 519-S of the Capitol.

Rep. Sawyer made a motion to amend **SB 499** to include an alternative approach to the Kansas Open Meetings Act (K.O.M.A.) and Kansas Open Records Act (K.O.R.A.) Rep. Goico seconded the motion.

Rep. Sharp made a motion to table **SB 499**. Rep. M. Miller seconded the motion.

Rep. Sharp withdrew her motion to table.

**Approval of Minutes**

Rep. Faust-Goudeau made a motion to approve the minutes of the March 9, 2006 meeting. Rep. M. Miller seconded the motion. Motion carried.

Chairman Vickrey adjourned the meeting.

The next meeting is scheduled for Thursday, March 16, 2006.



# BRAD SMOOT

ATTORNEY AT LAW

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Statement of Brad Smoot  
Legislative Counsel  
First American Property Information and Service Group  
House Governmental Organization and Elections Committee  
Regarding 2006 House Bill 3001  
March 14, 2006

Mr. Chairman and Members:

On behalf of First American Property Information and Service Group, a division of the First American Corporation, we appear today in support of 2006 House Bill 3001. First American is the nation's leading provider of business and real property information. We maintain offices in 14 Kansas counties and employ 185 Kansans. We rely heavily on access to public records, such as those held by a county Register of Deeds to serve our customers who include title companies, utilities, mortgage lenders, real estate brokers and salespersons, land surveyors, appraisers, insurance representatives, and government agencies. Virtually everyone involved with the Kansas real estate industry has a need for access to the records in the office of the Register of Deeds and many can and do save time and money by getting that information from us.

In 2005, the Kansas Supreme Court ruled against one of our subsidiary companies (Data Tree) and in favor of the Sedgwick County Register of Deeds regarding access to public records under the Kansas Open Records Act, K.S.A. 45-215 *et seq.* See *Data Tree v. Meek*, 279 Kan. 445, 109 P.3d 1226 (2005). The Register of Deeds had declined to provide copies of microfilmed public records on file in his office because some of the deeds and other filings contained personal information such as social security numbers, maiden names and birth dates. The County did agree to provide the records if the personal information was redacted (removed) from the microfilm at our expense. The cost was estimated to be \$22,000, along with a 5 – 6 months period required to perform the redaction, for just two months of records. Normally, such a request would have cost about \$50. Prior to this decision of the Sedgwick County Register of Deeds, such records in all Kansas counties had been readily available without redaction and the accompanying expense.

The *Data Tree v. Meek* case imposes an insurmountable financial burden on First American and consequently denies efficient, affordable, and timely access to certain previously public information for our thousands of customers -- customers who are an integral part of the Kansas real estate market.

There are several points about which both sides to this dispute can agree: First, the Register of Deeds office exists for one purpose, to keep and make available to the public records voluntarily filed by Kansas citizens, companies and government agencies. Second, the records themselves are clearly public under the KORA. And third, the Supreme Court's decision gives government records custodian's enormous discretion to determine what information constitutes a "clearly unwarranted invasion of personal privacy;" and to whom and for how much it may be delivered.

The Court used a "balancing of interests" test – the need to know versus personal privacy. This burden, now placed on all records custodians, creates a hodge podge of public access. One county may consider maiden names meaningless and therefore redaction is not required. A

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neighboring county may decide otherwise. One public officer may decide that the record was filed voluntarily thus reducing a person's expectation of privacy. A neighboring county may do just the opposite. Is the social security number of a person who is now deceased to be treated as private while an SSN held in another office is open for inspection? The court decision (balancing test based on the use to be made of the record) makes it possible for one Kansan to be denied a record while his neighbor might be granted access. Indeed, what was once public information, may by the passage of time, become private. (Remember when we all put SSN's on our driver's licenses or when cashing checks!) Frankly, this result is contrary to one of the primary reasons that the legislature passed the Kansas Open Records Act in the first place – to reduce the discretion of public records custodians in order to ensure equal access to public records.

Ironically, tomorrow another House committee will consider HB 3003, a bill that would prohibit the inclusion of social security numbers in any documents available to the public. We support keeping such information out of public records in the future. Our customers don't need it and we don't want it. But, if that provision were to apply to documents already on file, the Register of Deeds offices throughout Kansas would literally have to shut down and spend months or years going through every publicly recorded document one at a time and removing any SSN's that were once voluntarily placed in documents bound for public display.

Other states are dealing with the issue of personal information on publicly recorded land records by prohibiting the inclusion of personal information on such records on a prospective basis, i.e., prior to recording. Examples of recently enacted laws include Texas SB 461 (2005)<sup>1</sup> (which requires a notice to be printed on every deed or deed of trust that a natural person may strike a social security number or driver's license number prior to recording) and New Jersey AB 2047 (2005)<sup>2</sup> (which requires a county clerk to strike a social security number prior to recording). Under each of those laws, the inclusion of personal information in a record does not prevent it from being recorded and the record remains subject to public copying and inspection. In contrast, the Supreme Court's decision in *Data Tree v. Meek* makes Kansas the only state, of which we are aware, that requires redaction of land records after they have been recorded at the requester's expense.

What was once the county's most important public record keeper – the Register of Deeds – is now the judge and jury of what is public and what is not and to whom information may be given and for how much. After years of working with the Kansas Open Meetings and Open Records Acts, I cannot believe that this is what the Kansas legislature intended.

HB 3001 would restore the uniformity and predictability that was intended by the Kansas Open Records Act. It is one way for the Legislature to rectify the untenable situation created by the courts.

Thank you for consideration of our views.

<sup>1</sup><http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=79&SESS=R&CHAMBER=S&BILLTYPE=B&BILLSUFFIX=00461&VERSION=5&TYPE=B>

<sup>2</sup> [http://www.njleg.state.nj.us/2004/Bills/PL05/99\\_.PDF](http://www.njleg.state.nj.us/2004/Bills/PL05/99_.PDF)

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## **Kansas Press Association, Inc.**

*Dedicated to serving and advancing the interests of Kansas newspapers*

5423 SW Seventh Street • Topeka, Kansas 66606 • Phone (785) 271-5304 • Fax (785) 271-7341 • www.kspress.com

March 14, 2006

To: Rep. Jene Vickrey, chairman, and members of the House Governmental Organization and Elections Committee

From: Doug Anstaett, executive director, Kansas Press Association

Re: HB 3001

Mr. Chairman and Members of the Committee:

I come today offering the support of three media-related organizations — Kansas Press Association, Kansas Association of Broadcasters and the Kansas Sunshine Coalition for Open Government — to the general concept of HB 3001.

We support this bill because we believe the Kansas Open Records Act is very clear: In its first statement about public records in K.S.A. 45-216, Kansas law states: "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."

For our participatory democracy to work, Kansas residents must be able to have access to public records, and they must not be charged more than what is reasonably necessary for the privilege of such access.

Our interest in this bill was sparked by a move two years ago by Sedgwick County Register of Deeds Bill Meeks to place obstacles in the way of accessing certain voluntarily submitted records. Meeks cited as his authority for this unilateral decision what we commonly refer to as "A30," the personal privacy exception. He was later sued by a private firm called Data Tree, but that lawsuit was lost in district court and upon appeal to the Kansas Supreme Court.

As you may recall, we approached the Kansas Legislature last year to tighten up the definition of what constitutes a "clearly unwarranted invasion of personal privacy." We believed the law was so vague that it encouraged the overuse of this exception by some records custodians. Our position was that A30 had become the "last resort" exception when all others failed.

The 2005 Kansas Legislature agreed with our position and passed legislation stipulating that a "clearly unwarranted invasion of personal privacy" is defined as "revealing information that would be highly offensive to a reasonable person, including information that may pose a risk to a person or property and is not of legitimate concern to the public."

This is a two-part.

First, the information must be "highly offensive to a reasonable person." In other words, it can't just be "embarrassing" information, but information that would be found by a reasonable person to be "highly offensive."

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The second part of the test is the information "is not of legitimate concern to the public." Some information that may be "highly offensive" to a reasonable person may yet be of "legitimate concern" to the public, such as where pedophiles live. Both tests must be met, which greatly narrows the kind of information that can be withheld if the records custodian cites A30 as the reason for the denial.

We in the news media are well aware of the controversy swirling around identity theft because of still relatively easy access to Social Security numbers. We already have seen action taken to remove SSNs from driver's licenses. We have seen other attempts to make sure such numbers aren't routinely included on documents where they can be stolen and used by identity thieves.

We do not wish to be seen as enablers of such abuses, so we come to you today with a concept to remove Social Security numbers from most, if not all, public records.

We propose an amendment that would prohibit the use of Social Security numbers as a method of identification in publicly accessible records. Since we cannot turn back the clock because the expense of redacting such numbers from existing records would be prohibitively expensive, we instead suggest that on and after July 1, 2006, no public record produced in the state of Kansas that is accessible to the public should include a Social Security number.

We want as many records available to the public as possible, and that's what KPA, KAB and the Sunshine Coalition come here and fight for every year. We will continue to fight for even more access in the future.

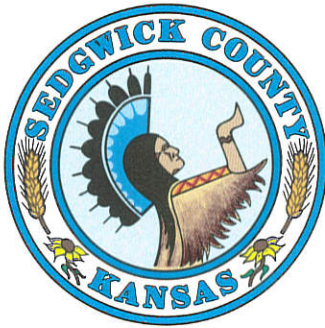
But we realize that the public — and we're members of the public as well — sees Social Security numbers as so personal and sacred that we agree there should be some protections built into the Kansas Open Records Act.

Here is our proposed amendment language:

*After July 1, 2006, the public policy of the state of Kansas will be to prohibit the use of Social Security numbers as a method of identifying an individual in a public record required to be open under the Kansas Open Records Act. Any agency that needs or wishes to continue to collect such information after July 1, 2006, may do so, but the cost of redaction of that information from records accessible to the public shall be the sole responsibility of the public agency.*

We think this is the right way to protect public access to records in the state of Kansas because it removes the most personal of individually identifiable information from the equation. We don't want SSNs; individuals don't want to share SSNs. It's a win-win for the people of Kansas.

I would be glad to stand for questions.



SEDGWICK COUNTY, KANSAS  
REGISTER OF DEEDS

**BILL MEEK**  
REGISTER OF DEEDS

P.O. Box 3326 ● Wichita, Kansas 67201-3326 ● (316) 660-9400 ● FAX: (316) 383-8066

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TESTIMONY BY THE SEDGWICK COUNTY REGISTER OF DEEDS  
TO THE HOUSE GOVERNMENTAL & ELECTION COMMITTEE

HOUSE BILL 3001

I am here representing the Register of Deeds Office and Sedgwick County. I thank you for the opportunity to provide input during your decision making process.

House Bill 3001 if enacted, I am convinced, would reverse the Kansas Supreme Court decision in a case where I was the defendant and captioned as Data Tree LLC, Appellant, v. Bill Meek, Sedgwick County Register of Deeds. 279 Kan. 445, 109 P.3d 1226(Kan., 2005). In other words, it would require the release to the public information the Court said was subject to discretionary protection as an unwarranted invasion of personal privacy.

The Kansas Supreme Court held that information such as social security numbers, mother maiden names and dates of birth could be redacted from government documents, including documents maintained by a register of deeds, as an unwarranted invasion of privacy.

This may also impact KS 45-221 (46). It may indirectly open information contained in DD214's (Military Discharges) that was just protected by the legislature.

The Register of Deeds records includes but are not limited to DD214 (Military Discharges), UCC's (Uniform Commercial Codes), UCC Releases/Satisfactions, Death Certificates, Federal and State Tax Liens, Mortgages, Mortgages Releases/Satisfactions, Liens/Judgments (Homeowners Associations, Fines, Misc.), Deeds (All Types), Miscellaneous Notices/Affidavits, Affidavit of Equitable Interest, Bankruptcy Documents, Probate, Misc. Court Documents, Power of Attorneys, Re-file Documents (Corrections). Many of these raw documents contain private information that if placed into the wrong hands can destroy lives.

Identity theft is increasing through the United States. Just yesterday I was in the US Post Office and saw a picture of a little old lady and the caption said "this lady talked to a nice man by the name of Mike who

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convinced her to tell him her social security number and now her bank account is empty. Identity theft is real.

Public records for private and commercial use should be made available. Sedgwick County has in place the following procedures (see attached). We are trying to balance the request for open records and protecting the citizen of Sedgwick County. On the Data Tree request and others Sedgwick County **DID NOT** refuse access to the Register of Deeds records.

Just yesterday I read an article that in Hamilton County, Ohio eight people were charged with identity theft from information they received from public records (see the article attached).

Thank you for your consideration and I will stand for questions.

## Sedgwick County Open Records Procedures

### WALK-INS

- They will sign a form.
- This will say "Read Carefully Before Signing"  
I hereby acknowledge that I am aware that K.S.A. 45-230 provides:  
"No person shall knowingly sell, give or receive, for the purpose of selling or offering for sale, any property or service to persons listed therein, any list of names and addresses contained therein, or derived from public records..."  
The requestor certifies that the information obtained from the records in the Sedgwick County Register of Deeds Office will not be used for a prohibited purpose as set out in the Kansas Open Records Act.
- This form includes the date, name, address, company, type of records and signature. We also ask for photo identification.
- The ROD clerk will pull the doc, make a copy, and redact personal information (social security number, etc.)
- Customer will receive their copy and be on their way.

### COMPUTER ACCESS

#### 24 HOUR A DAY/ 7 DAYS A WEEK

- On Sedgwick County ROD web site there is an icon where they can access and view records. The records would include the data field (grantor, grantee, legal description, type of doc, etc.). Would also have the option to view the document. Redacted documents will not be shown on this web site.
- There is an 2<sup>nd</sup> icon on the web-site that is set up by contract and computer user agreement where the company or individual, where the user is set up with an id and password were they can see all documents even the ones that are redacted.

### MICROFILM SALES

#### WHICH IS KANSAS ARCHIVAL MEANS

- The person or company any wanting the bulk and unredacted will sign an agreement with Sedgwick County .
- We will then contact our film developer and inform them that company X is allowed to receive the bulk microfilm.
- The microfilm developers will delivery to the company and charge the company for the duplication of the microfilm.
- Sedgwick County does not charge any service fee. The charges are strictly between the film developer and the requester of information.

# User Agreement

## Access to Sedgwick County Register of Deeds Electronic Files and Records

All employees, personnel or agents of any authorized Subscriber to the Sedgwick County Register of Deeds' electronic files who will access Sedgwick County Register of Deeds microfilm libraries, information technology or other Register of Deeds' records ("User") are required to sign this document before accessing any Sedgwick County Register of Deeds microfilm libraries, computer images or other Sedgwick County Register of Deeds records or information as set forth in the applicable Subscriber agreement. "Information technology" includes any computer, network, Internet access, electronic mail and voice message systems, facsimile devices, or other electronic systems used by Sedgwick County. Subscriber, Subscriber employees, personnel and agents have no expectation of privacy in use of any computer technology or access to records as set forth in this User Agreement or the Subscriber Agreement. Sedgwick County reserves the right to review, audit, or monitor any information technology used by Subscriber Personnel. Subscriber and Users have duties to protect against placing private information into the possession of the general public or in the possession of persons that do not have a legitimate business need for the information in violation of the Subscriber Agreement.

1. User hereby agrees to refrain from, either directly or indirectly, placing private information into the possession of the general public or in the possession of persons that do not have a legitimate business need for the information. User agrees to use all due diligence in preventing any dispersal, however minor, of private information beyond what is reasonably necessary in carrying out Subscriber's business. "Private information" is defined as that information the release of which could constitute an unwarranted invasion of personal privacy and specifically includes, but is not limited to, social security numbers, mother's maiden names and dates of birth.
2. User has no expectation of privacy in any electronic communications, use of Sedgwick County property, access to electronic files or internet access. Sedgwick County reserves the right to review, audit, or monitor any information technology used by User.
3. User shall use only accounts authorized by the Sedgwick County Register of Deeds.
4. User may access only those resources for which they are specifically authorized.
5. User is personally responsible for safeguarding his/her account and log-on information. Passwords shall remain confidential.
6. User is not permitted to script his/her user IDs and passwords for log-on access.
7. User is not permitted to allow another person to log-on to any computer utilizing his/her, if provided, personal account, nor are they permitted to utilize someone else's account to log-on to a computer. Authorized system or service accounts may be used by multiple people.
8. User may not leave his/her workstation logged onto the network while away from the area. User may elect to lock the workstation rather than logging off when leaving for very short time periods.
9. User shall execute only applications that pertain to the Subscriber's access agreement.
10. User shall promptly report log-on problems or any other computer errors to the Register of Deeds.
11. User shall promptly notify the Register of Deeds if he/she has any reason to suspect a breach of security or potential breach of security.
12. User shall promptly report anything that they deem to be a security loophole or weakness in the computer network to the Register of Deeds.
13. User shall not install or use any type of encryption device or software on any Sedgwick County hardware, which has not been approved in writing by the Register of Deeds.
14. User shall not attach any device to the Sedgwick County network without written approval from the Register of Deeds.
15. User may not remove any computer hardware from a Sedgwick County building for any reason, without prior written approval from the Register of Deeds.
16. User shall not delete, disable, or bypass any authorized encryption device, or anti-virus or other software program, installed on Sedgwick County hardware.
17. User shall not attach any network or phone cables to any Sedgwick County device without written approval from the Register of Deeds.
18. User may not copy any data and/or software from any Sedgwick County resource for personal use.
19. Sedgwick County data and/or software shall not be removed from a Sedgwick County Building without prior written approval from the Register of Deeds.
20. User may not utilize Sedgwick County computer systems for any of the following reasons:
  - a. Non-related work activity;
  - c. Any illegal activity; or
  - d. Downloading of files from the Internet. If files are needed for your work, contact Sedgwick County DIO IT personnel.
21. User is prohibited from intercepting or monitoring network traffic by any means, including the use of network sniffers, unless authorized in writing by the Register of Deeds.
22. User may not give out any Sedgwick County computer information to anyone. Exception: other User needing the information to complete tasks and who have signed this agreement. Information includes but is not limited to: IP addresses, security configurations, etc.
23. All data storage media shall be erased or destroyed prior to disposal.
24. User may not remove or delete any computer software without the written approval of the Register of Deeds.
25. User shall not attempt to obtain or distribute Sedgwick County system or user passwords.
26. All equipment issued to User will be returned in good condition to Sedgwick County upon termination of this agreement or of the User/Subscriber relationship.
27. User may not use Sedgwick County information technology to send or receive threatening, obscene, abusive, sexually explicit language or pictures.
28. User is prohibited from causing Sedgwick County to violate copyright laws.
29. Use by User of any Sedgwick County information technology constitutes the User's acknowledgment and acceptance of the above-referenced policies. Any User who violates any of these policies shall be subject to disciplinary action, including complete removal from the Subscriber's project(s) requiring access to Register of Deeds records as well as being subject to Kansas civil and criminal liability. The Register of Deeds may request the Subscriber consider such disciplinary action as demotion, suspension or termination of User.
30. This agreement shall automatically terminate upon the User's separation of employment with the authorized Subscriber except that the duties to maintain the privacy of personal information (see section 1 of this Exhibit) and to hold Sedgwick County harmless from any action based upon a breach of that duty (see section 9 of Subscriber Agreement) shall survive.

I understand and agree to the provisions set forth above.

\_\_\_\_\_  
User Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Subscriber Name (Print)

\_\_\_\_\_  
User Name (Print)

## AGREEMENT

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ [month] \_\_\_\_\_ [year] by and between the Sedgwick County Register of Deeds ("Register of Deeds" or "ROD"), and \_\_\_\_\_ [name and title], **an abstractor duly licensed in the State of Kansas pursuant to K.S.A. 58-2801 ("Subscriber")**.

WHEREAS, K.S.A. 58-2804 provides that licensed abstractors shall have full access to the county records of the Register of Deeds and the other county offices;

WHEREAS, K.S.A. 58-2804 also provides that said abstractors shall be under the same obligations to protect and carefully keep and preserve the records as the several county officers who have legal custody thereof, and subject to the same penalties for a violation thereof as the Register of Deeds;

WHEREAS, the Sedgwick County Register of Deeds maintains certain records including but not limited to mortgages, death certificates, real estate deeds, Uniform Commercial Code statements and other records on paper copies, in microfilm libraries, and in some cases a digital format in computer databases which are generally available to the public with the exception of information contained therein the release of which would be an unwarranted invasion of personal privacy;

WHEREAS, the Sedgwick County Register of Deeds desires to maintain the privacy of individuals and prevent the unwarranted invasion of personal privacy through the unrestricted access to social security numbers, mother's maiden names, dates of birth and other personally identifying information that could assist unscrupulous individuals in the furtherance of identity theft and such other crimes as may result from the misuse of this information;

WHEREAS, K.S.A. 2004 Supp. 65-2422d, as amended, restricts the copying of death certificates; and

WHEREAS, Subscriber desires to have access to the raw data or documents as maintained in the Register of Deeds' microfilm libraries and other records maintained by the Register of Deeds via other mediums.

NOW, THEREFORE, in consideration of the mutual conditions, covenants and promises contained herein, the parties hereto agree as follows:

### **SECTION 1: STATEMENT OF PURPOSE.**

The purpose of this Agreement is to define circumstances, responsibilities, and compensation relating to the ROD's provision of access to microfilm libraries and other records stored and maintained by the ROD.

**SECTION 2: TERM OF AGREEMENT.**

This Agreement shall be in full force and effect beginning upon execution by both parties and remaining effective until the conclusion of the Register of Deeds' current term of office (January 2009). Thereafter, this Agreement shall continue for successive monthly periods upon the same terms, provisions and conditions as provided herein excepting that at either party's option, this Agreement may be terminated at any time upon thirty (30) days advance written notice to the other party.

In addition, this Agreement is subject to the survival provisions of Section 16 below.

**SECTION 3: DEFINITION OF TERMS.**

Records: Documents filed and or maintained in the office of the Sedgwick County Register of Deeds.

**SECTION 4: COUNTY RESPONSIBILITIES.**

Sedgwick County Register of Deeds will have final control and responsibility for maintaining the security, upkeep, and preservation of his records.

**SECTION 5: SUBSCRIBER RESPONSIBILITIES.**

Subscriber agrees to the following:

- a. The receipt of copies of raw un-redacted data is a privilege and not a right;
- b. Subscriber's use or misuse (for any reason) of information from un-redacted documents (or any information derived therefrom) which would place private information into the possession of the general public or in the possession of persons who do not have a legitimate business need for the information may result in revocation of access to an individual, group of individuals or Subscriber at any time and is a material violation of this Agreement. For the purposes of this Agreement, "private information" is defined as that information the release of which could constitute an unwarranted invasion of personal privacy and specifically includes, but is not limited to, social security numbers, mother's maiden names and dates of birth;
- c. Subscriber's receipt of authorized copies of data provides no right to ownership of the records at any time;
- d. Subscriber will abide by Register of Deeds' reasonable regulations which may now be in force or effect or which may in the future become effective;
- e. Subscriber will not sell, distribute, or otherwise provide raw copies of documents (by any means) to any entity whether a subsidiary, parent corporation, affiliated entity or any other person, organization or entity, unless said person, organization or entity is an abstractor duly licensed in the State of Kansas, without redacting personal identifying information. This restriction on delivery

of documents does not apply if providing a specific unredacted document which is necessary in the course of business and the provision of said document does not unreasonably jeopardize the confidential nature of the private information. Otherwise, the information, which shall be redacted, shall specifically include, but not be limited to social security numbers, mother=s maiden names, dates of birth, or any other information which may constitute an unwarranted invasion of personal privacy. The names and addresses of individuals need not be redacted and are specifically not included within the identification of information, which shall be redacted. Further, Subscriber agrees that it will not provide raw copies of death certificates that may be maintained in the Register of Deeds' files, except to abstracters licensed in the State of Kansas;

f. Should Subscriber enter into an agreement with any subsidiary, parent corporation, affiliated entity, or any other person, organization, or entity that is licensed as an abstracter in the State of Kansas for the provision of documents, said agreement will contain provisions and notice that no person shall knowingly sell, give or receive, for the purpose of selling or offering for sale any property or service to persons listed therein, any list of names and addresses contained in or derived from public records and that violation of this provision is subject to a \$500.00 civil fine for each violation pursuant to K.S.A. 2004 Supp. 45-230; and said agreement will contain the substantive provisions set out in this Section 5;

g. Subscriber will take all reasonable and necessary measures to ensure that its employees will not violate any of the provisions set forth in this agreement; such measures are to include, but not be limited to, requiring all Subscriber's employees having rights to access ROD's files ("Users") to read, understand and sign the attached Exhibit A, 'User Agreement';

h. Subscriber shall forward the original signed 'User Agreement' to ROD's office prior to allowing a User access and Subscriber shall retain a copy of said document; and

i. Subscriber shall immediately notify the Register of Deeds of any User's separation of employment from Subscriber.

#### **SECTION 6: BILLING AND PAYMENT.**

a. Sedgwick County Register of Deeds will submit to Subscriber a statement of the costs associated with the providing copies of the microfilm library records or raw records stored via other mediums. All costs shall be based upon the actual cost of providing the requested records and may include the costs paid to outside vendors for the preparation of the microfilm when said film is prepared by the outside vendor.

b. All costs, if any, shall be paid at the time access to the records is obtained.

#### **SECTION 7: ILLEGAL PROVISIONS.**

If any provision of this Agreement shall be declared by a court of competent jurisdiction to be illegal, void or unenforceable, the other provisions shall not be affected but shall remain in full force and effect.

**SECTION 8: TERMINATION.**

At the option of the ROD, this Agreement may be terminated immediately upon the occurrence of any of the following:

- a. Subscriber's non-payment in violation of Section 6 hereof;
- b. Subscriber's violation of K.S.A. 2004 Supp. 45-230;
- c. Subscriber's failure to indemnify Sedgwick County, its officers, including but not limited to the Register of Deeds, and their agents and employees Register of Deeds pursuant to Section 9 hereof;
- d. Subscriber's allowance of unauthorized access prohibited hereby, including but not limited to, the violation by Subscriber's employee of the 'User Agreement' (attached hereto as Exhibit A) or Subscriber's failure to obtain a signed 'User Agreement' prior to allowing an employee access to ROD's records; or
- e. Subscriber's material breach of any term, provision or condition of this Agreement.

At either party's option, this Agreement may be terminated at any time upon thirty (30) days written notice to the other party.

**SECTION 9: INDEMNIFICATION AND HOLD HARMLESS PROVISIONS.**

Subscriber hereby relieves, releases, indemnifies and holds harmless Sedgwick County, its officers, including but not limited to the Register of Deeds, and their agents and employees of liability for any and all damages resulting from any act or omission on part of the Subscriber, incorrect or misinterpretation of data or any other liability from information obtained from data records pursuant hereto. Subscriber further agrees to and does hereby indemnify and save the Register of Deeds harmless from any and all liability as a result of Subscriber's willful violation of any law or regulation pertaining hereto with particular reference to provisions of K.S.A. 2004 Supp. 45-230.

**SECTION 10: INTERRUPTION OF SERVICE.**

The Register of Deeds shall use his best efforts to provide adequate and uninterrupted service under the terms hereof. However, Register of Deeds shall not be liable for interruption of service or delays in providing document copies when the same shall be due to circumstances beyond the control of Register of Deeds, his agents, servants, or employees, including but not limited to equipment malfunction and periodic maintenance of the Register of Deeds' document storage system.

**SECTION 11: ASSIGNMENT.**

This Agreement may not be assigned by Subscriber without the prior written consent of the Register of Deeds. Any assignment made without said consent shall be null and void.

**SECTION 12: NOTICES.**

All notices shall be in writing and shall be directed to the parties hereto as shown below:

To Register of Deeds: Sedgwick County Register of Deeds  
525 N. Main, Suite 415  
Wichita, KS 67203

To Subscriber: \_\_\_\_\_ (Business Name)  
\_\_\_\_\_ (Contact Person)  
\_\_\_\_\_ (Street Address)  
\_\_\_\_\_ (City/State/Zip)  
\_\_\_\_\_ (Phone Number)

**SECTION 13: CONSTRUCTION.**

This Agreement shall be construed in accordance with the laws of the State of Kansas.

**SECTION 14: PARAGRAPH HEADINGS.**

The paragraph headings are inserted in this Agreement for convenience only and shall not be used in interpreting this Agreement.

**SECTION 15: ENTIRE AGREEMENT.**

This Agreement, which specifically includes the 'User Agreements' referred to in Section 5, constitutes the complete and exclusive statement of the agreement between the parties hereto. No amendment, waiver or alteration of this Agreement shall be effective unless signed by an authorized officer of each of the parties hereto. Neither Register of Deeds nor Subscriber shall be bound by any oral agreement or representation.

**SECTION 16: SURVIVAL.**

The provisions of sections 5, 6 and 9 of this Agreement shall continue to bind the parties subsequent to the termination or expiration of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

SEDGWICK COUNTY, KANSAS  
REGISTER OF DEEDS

\_\_\_\_\_  
William Meek  
Register of Deeds



APPROVED AS TO FORM:

SUBSCRIBER

\_\_\_\_\_  
ED L. RANDELS  
Assistant Sedgwick County Counselor

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
PRINTED NAME

TITLE \_\_\_\_\_

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# County's Web site cleansed

## Prosecutors charge 8 with identity theft

BY DAN HORN | ENQUIRER STAFF WRITER

Hamilton County officials ordered the removal of hundreds of documents from a county Web site Friday after learning some contained Social Security numbers and other personal data.

The decision to strip the records from the county clerk of courts' Web site came as authorities in Cincinnati and Columbus continued to face criticism for making personal information available on the Internet.

The controversy began earlier this week when The Enquirer disclosed that the Ohio Secretary of State's Web site included hundreds, if not thousands, of documents with Social Security

The issue arose again Friday when federal prosecutors announced that an identity-theft ring used Hamilton County's Web site to access Social Security numbers.

Prosecutors said eight people from Cincinnati and other Ohio cities are charged with participating in the theft ring, which is accused of stealing nearly \$500,000 between 2001 and 2005.

Clerk of Courts Greg Hartmann said he had been aware of the federal investigation for more than a year, and it was one of the reasons his office removed hundreds of thousands of documents from the Web site in 2005. "We put changes in place as soon as we found out," he said.

After reviewing the Web site Friday morning, The Enquirer found hundreds of tax-related documents that frequently include Social Security numbers and other personal data.

Hartmann said he didn't know the documents included Social Security numbers and would remove them from the site as soon as possible. The Enquirer is not naming the specific documents, which remained available late Friday, to protect against identity theft.

Hartmann, a Republican candidate for secretary of state this year, said the electronic documents are regularly sent to the county by Attorney General Jim Petro's office and then posted on the clerk's Web site.

"It's an ongoing process to remove everything with a Social Security number on it," said Hartmann, who estimated the clerk's site contains about 11 million pages of records. "It's not perfect yet."

Petro spokesman Mark Anthony said his office has removed Social Security numbers from the data sent to court clerks' offices across the state, but some older records apparently still contain them. He said the responsibility for making the records public rests with Hamilton County - not with the attorney general.

"The burden is on the custodian of the record who makes the record public," Anthony said.

The records Hartmann ordered removed Friday apparently were not among those used in the identity-theft case.

Hartmann said traffic tickets, Domestic Relations Court records and other documents that are no longer available online were the main source of information for identity thieves. About 1 million of those documents have been removed from the Web site since last year.

Federal prosecutors said the thieves also obtained personal information by stealing mail and searching other Web sites.

"They had other, more traditional, methods of getting information," said Fred Alverson, spokesman for U.S. Attorney Greg Lockhart.

A federal grand jury indicted the eight suspects Feb. 15, but authorities did not publicize the indictment until this week because they had not arrested all of the suspects. Seven of the eight now are in custody.

The suspects are accused of seeking victims who were similar in age and appearance to them, making it easier to get fraudulent driver's licenses, checking accounts and other documents.

Members of the ring used the documents to cash checks and buy products in at least six states, including Ohio, the indictment states.

Prosecutors would not say how many people were victimized, but court records suggest the number may be large.

Many purchases made with fraudulent documents were relatively small, some for as little as \$120.

The cases this week raised new concerns about the risk of identity theft in the age of the Internet. Hamilton County court records show about 130 convictions on identity theft charges since 2002.

Government agencies that maintain Web sites have struggled for years to strike a balance between complying with public records laws and protecting individual privacy rights.

Media organizations, including The Enquirer, have fought to keep many records open and online, while others have said the government has no obligation to post records.

"The government is supposed to protect us, not provide a tool to criminals," said Bob Kroger, an Anderson Township man who successfully fought last year to remove his divorce records from the clerk's site.

Increasingly, government agencies are removing or restricting access to online records. Warren County provides no documents online, while Clermont and Butler counties still provide many.

Former Clerk of Courts Jim Cissell, who created the clerk's Web site, said the solution to the problem is for police, agencies and others to simply stop putting Social Security numbers on so many documents, such as traffic tickets.

"People are putting Social Security numbers on records when they don't have to," Cissell said.

Some government officials say the law requires them to post documents online, whether they like it or not.

Secretary of State Ken Blackwell, a candidate for governor, said that's why he has not removed the documents containing Social Security numbers from his site. His stance has drawn criticism from Democrats and from Petro, his Republican primary opponent.

Blackwell spokesman Carlo LoParo said the secretary of state wants to comply with the law and protect privacy rights.

"We are exploring ways to prevent that information - specifically Social Security numbers - from being available to mass audiences through the Internet," LoParo said.



**Testimony in opposition to HB 3001**  
**presented to the**  
**Governmental Organization and Elections Committee**  
**by**  
**Cynthia Dunham**  
**Assistant County Counselor, Johnson County**  
**March 14, 2006**

Chairperson and committee members, I am Cynthia Dunham, an Assistant County Counselor for Johnson County, Kansas, and I appear here today on behalf of the Board of County Commissioners of Johnson County. I appreciate the opportunity to appear before the Committee and to present testimony in opposition to House Bill 3001.

House Bill 3001, if enacted, would negatively impact the personal privacy of Kansas citizens because it would mandate the disclosure of highly personal information contained in records filed with county registers of deeds. HB 3001 would deprive counties from exercising the discretion the law currently grants them to limit the release of personal information appearing on records filed with county registers of deeds. Denying counties the ability to protect disclosure of personal information found in these records would sacrifice citizen's personal privacy for the benefit of for-profit commercial users of real estate records. There is no public purpose served by sanctioning this type of unrestricted disclosure of personal information.

The vast majority of information maintained by county registers of deeds is directly related to real estate. However, there are several types of recorded documents that contain additional information of a personal nature. In particular, social security numbers are found on a number of documents such as tax liens, death certificates, and some mortgages. While the practice appears to be decreasing among lenders, many homeowners do not realize that their mortgage lender may have included their social security number on their publicly recorded mortgage. Other recorded documents, such as death certificates, contain personal information such as mother's maiden name and date of birth.

Under the Kansas Open Records Act (KORA), public agencies are given the discretion to disclose or to not disclose records or information that fall within one of the categories of exceptions listed in K.S.A. 45-221. Under subsection 30 of this statute, public agencies have the

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Date: 3-14-06

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discretion to determine whether to reveal information or records that would result in a clearly unwarranted invasion of personal privacy. Currently, all public records are subject to this discretionary exception for personal privacy. HB 3001 would amend K.S.A. 45-221 by prohibiting the application of the personal privacy exception to records held by the county registers of deeds. In other words, registers would no longer have the option of redacting or removing personal information, such as social security numbers, from public records before disclosing them.

Further, HB 3001 would effectively overturn current case law. Also, while it is unclear, HB 3001 as written may also impact DD Form 214, the military discharge records filed with county register of deeds, which contain information of a highly personal nature. These records are currently protected from disclosure to the public under K.S.A. 45-221(46). HB 3001 could be interpreted to contradict the protection from disclosure for these records under the current exception.

For most of our State's history, records filed at the county register of deeds offices were accessible only at the county courthouse. While counties have been microfilming these records for decades, many Kansas counties are now indexing, maintaining, and storing these records electronically and digitally. Several county register of deeds offer limited online access to these records. As a result, register of deeds records are more accessible than ever before. While this is beneficial from the standpoint of promoting open records, it also carries the risk of easy access to personal information that previously could only be accessed in person at the courthouse.

Redaction or other removal of personal information from county register of deeds records is not a requirement under Kansas law. K.S.A. 45-221 places discretion in the county registers of deeds to determine whether redaction is appropriate. Registers regularly deal with the ever-increasing requests for data from national for-profit data collection companies and are in the best position to understand and respond to privacy issues regarding these records. Many registers do not redact personal information. Johnson County does not currently redact. Instead, Johnson County limits disclosure of personal information by limiting access to documents. Johnson County register of deeds' documents are available only in person at the county administration building or through an online subscription service, which requires the user to sign a written use agreement. Even though Johnson County does not currently redact, we believe it is essential to preserve the registers' discretion to redact especially when dealing with massive data requests from data collection companies.

As identity theft continues to increase, it is more important than ever that safeguards protecting personal privacy are maintained. The ability of the county registers of deeds to redact personal information is one of those safeguards and it needs to be preserved. For this reason, we urge this Committee to oppose HB 3001. Thank you.



**KANSAS**  
ASSOCIATION OF  
**COUNTIES**

TESTIMONY ON HB 3001

Before the House Governmental Organization and Elections  
Committee

March 14, 2006

By Judy Moler, General Counsel/Legislative Services Director

Thank you for allowing the Kansas Association of Counties to speak in opposition to HB 3001. This bill as presented would represent a threat to personal privacy and personnel information that could be obtained and perhaps even sold. This information could include mother's maiden name, social security numbers and other information that is not needed by vendors or others in the general public.

The Kansas Association of Counties cannot discern what public purpose this information would serve being in the hands of others. It is the role of local government to be the steward of the information given to them. Thus, the local government is interested in retaining the ability to keep information private when necessary to protect its citizens.

For these reasons, the Kansas Association of Counties urges you to vote "no" on HB 3001

The Kansas Association of Counties, an instrumentality of member counties under KSA 19-2690, provides legislative representation, educational and technical services, and a wide range of informational services to its member counties. For information contact Randall Allen or Judy Moler (785) 272-2585.

300 SW 8th Avenue  
3rd Floor  
Topeka, KS 66603-3912  
785•272•2585  
Fax 785•272•3585

House Gov. Org. & Elections  
Date: 3-14-06  
Attachment # 5



300 SW 8th Avenue  
Topeka, Kansas 66603-3912  
Phone: (785) 354-9565  
Fax: (785) 354-4186

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League of Kansas Municipalities

Date: March 14, 2006  
To: House Governmental Organization and Elections Committee  
From: Larry R. Baer  
Assistant General Counsel  
Re: HB 3001  
Written Testimony in Opposition

Thank you for allowing the League of Kansas Municipalities to present written testimony in opposition to HB 3001. HB 3001 is an attempt to legislatively overturn a recent Kansas Supreme Court case, *Data Tree, LLC v. Bill Meek, Sedgwick County Register of Deeds*, 279 Kan. 445, 109 P.3d 1226 (2005). The League has several concerns with HB 3001:

1. In a well reasoned opinion the Kansas Supreme Court specifically found that the "clearly unwarranted invasion of personal privacy" language that is found in K.S.A. 2005 Supp. 45-217 is applicable to records maintained by a county register of deeds. In so doing, the Court specifically stated:

The privacy exception contained in K.S.A. 2004 Supp. 45-221(a)(30) is intended to exempt personal information in a government records that relates to intimate details of a person's private life. The public's right to have access to the information contained in government records is thus qualified by the protection of an individual's right to maintain the privacy of personal information having *no bearing on matters of public interest*. (Emphasis added) Whether public disclosure would constitute a clearly unwarranted invasion of personal privacy is determined by the comparative weighting of antagonistic interests where the privacy interests of nondisclosure is balanced against the general rule of inspection and its underlying policy of openness to the public. The circumstances of a given case affect the weighing or balancing of interests. ... (T)he information being sought was not for its public notice properties but for commercial purposes, *i.e.*, the sale of the information to business interests which have no relationship to the transaction recorded. ... Where disclosure of personal or private information fails to significantly serve the principal purpose of the [Kansas Open Records Act], nondisclosure is favored if such nondisclosure complies with the other requirements of the KORA. (Syl. ¶¶ 4, 5, 6, 7.)

Thus, the Kansas Supreme Court has answered and resolved the question. HB 3001 appears to be a solution in search of a problem.

2. In the opinion of the Kansas Supreme Court, K.S.A. 2005 Supp. 45-221(a)(30) can be applied in the discretion of the records custodian. Thus, the records custodian "makes the call" as to whether or not the requested record contains information that "would be highly offensive to a reasonable person, including information that may pose a risk to a person's property and is not of a legitimate concern to the public." HB 3001 would abrogate the records custodian's discretion to judge the appropriateness of the information requested for release.

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3. HB 3001 is contrary to the provisions of K.S.A. 2005 Supp. 45-221(a)(46) which prohibits the disclosure of military discharge papers (DD Form 214) filed with the register of deeds except for very limited purposes.

4. K.S.A. 45-221(a)(30) was in fact amended in 2005 (L. 2005, Ch. 126, ¶ 7) to provide for a definition of "clearly unwarranted invasion of personal privacy." This definition followed the Court's findings and rulings in *Data Tree*. Thus, the definition has been codified and the status of the phrase that appears to be in question has been clarified.

5. At a time when there is worldwide concern about identity theft, the lifting of a discretionary closure of certain contents of publically maintained records would seem to be poor public policy. This is particularly true when one considers that *Data Tree* specifically says that disclosure of social security numbers, mother's maiden names and dates of birth can be withheld by a register of deeds when such information bears little significance to the purpose of the KORA.

In summary, current law provides an adequate definition of "clearly unwarranted invasion of personal privacy." In addition, current law establishes reasonable guidelines for records custodians to follow in determining whether or not to disclose records regarding matters of personal privacy. The adoption of HB 3001 would result in the elimination of any checks and balances on what personal information in the possession of registers of deeds is disclosed and would expand the opportunity for identity theft. For these reasons the LKM opposes HB 3001 and asks that you not advance it out of committee.

Thank you for your consideration of the League's position on this matter. If there are questions regarding the League's position, I will be happy to respond.

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