

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT

The meeting was called to order by Chairman Tim Huelskamp at 1:30 P.M. on February 2, 2006 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Martha Dorsey, Kansas Legislative Research Department
Mike Heim, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes
Zoie Kern, Committee Secretary

Conferees appearing before the committee:

Doug Anstaett - executive director of KPA
Harriet Lang - president of Kansas Association of Broadcasters
Janis McMillen - League of Women Voters of Kansas
Jim Edward - Kansas Association of School Boards
Kimberly Winn - League of Kansas Municipalities

Others attending:

See attached list

Senator Petersen made a request to introduce a bill in regards to licensing of electricians.

Senator Betts moved to introduce bill and second by Senator O'Connor.

Motion carried.

Senator Petersen also requested the introduction of bill to require Home Improvement District board members to live in the district or own property in the district they represent.

Senator O'Connor moved to introduce bill and Senator Pyle second.

Motion carried.

Senator O'Connor moved the introduction of a bill to phase out the franchise tax.

Senator Pyle seconded.

Motion carried.

Open hearing on **SB 410** - Public officials; required training regarding KOMA and KORA.
Ken Wilke of Revisors of Statues office reviewed the bill.

Doug Anstaett, Executive Director of Kansas Press Association, testified in favor of **SB 410** (Attachment 1).

Harriet Lang, President of Kansas Association of Broadcasters, testified in favor of **SB 410** (Attachment 2).

Janis McMillen, League of Women Voters, testified in favor of **SB 410** (Attachment 3).

Jim Edwards, Kansas Association of School Boards, testified in favor of **SB 410** (Attachment 4).

Kimberly Winn, League of Kansas Municipalities testified in favor of **SB 410** (Attachment 5). Kim also submitted Kansas Open Records Manual (Attachment 6) and Kansas Open Meeting Manual (Attachment 7) as reference in her testimony.

Written testimony was submitted on behalf of Randy Brown, Executive Director of Kansas Sunshine Coalition for Open Government in favor of **SB 410** (Attachment 8).

With no further discussion the chairman closed the hearing on **SB 410**.

Meeting adjourned.

Next meeting scheduled for Tuesday February 7th.

CONTINUATION SHEET

MINUTES OF THE Senate Elections and Local Government at 1:30 P.M. on February 2, 2006 in Room 423-S of the Capitol.

Respectfully submitted,

Zoie C. Kern

Senate Elections & Local Government Committee
Daily, 1:30 - 2:30 p.m. Room 423-S
Senator Tim Huelskamp, Chair

Guest List for February 2, 2006

Please sign in with BLACK Ink.

Name	Representing
Richard Cannon	KPA
Janis McMillan	Ks League of Women Voters
Doug Anstatt	KPA
Jim Edwards	NAAB
Erik Sartorius	City of Overland Park
Let May	LGR
Marilyn Nichols	Shawnee Co. Register of Deeds
Aaron Johnston	Sen. Bruce
Kim Winn	LKM
Judy Moler	KAC
Harriet Lange	KAB
David Rowe	Intern - San Francisco
Gregory Mansfield	parent, Shawnee Msn schools



Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

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Feb. 2, 2006

To: Senate Elections and Local Government Committee

From: Doug Anstaett, executive director, Kansas Press Association

Re: SB 410

Mr. Chairman and members of the Committee:

Thank you for this opportunity to address a bill we believe promotes good government in Kansas. When we have informed public officials, the public's business is more likely to be done in the sunshine and according to state law.

Think about it: We don't send new drivers out on the road without the information necessary to make sure they understand the law.

We don't place new teachers in the classroom until they have been certified to teach and truly understand how children learn.

And we don't put new patrol officers on our highways until they have been schooled in the traffic laws and the criminal code of Kansas.

It just makes sense.

So why do we send elected members of our school boards, city councils and county commissions out to make policy, consider spending decisions that involve millions of dollars and deal with other complex issues without some kind of training program?

That's what SB 410 is all about ... equipping elected officials in Kansas with the knowledge they need about our open records and open meetings laws. The Kansas Press Association supports SB 410 because it will require elected officials to undergo training on the Kansas Open Records Act and the Kansas Open Meetings Act within 90 days of being sworn into office.

Why mandatory training? Because the calls we get and the conflicts we witness on a daily basis indicate many of the KORA and KOMA questions that arise come not because elected officials are purposely trying to thwart the letter and spirit of the law but because they simply don't understand it.

The KPA office and our legal hotline attorney, Mike Merriam of Topeka, spend a great deal of time interpreting the law and refereeing disputes over KORA and KOMA. Between the two offices, we handle 250 calls a year from newspaper reporters and editors who have witnessed their local elected officials misinterpreting or misapplying our open government laws.

Elections and Local Government
2-02-06
Attachment 1

We turn over the reins of government to men and women who want to do the right thing, but don't always know what the right thing is? And because they don't know, they often rely on advice from their attorneys, who also often don't understand what the law requires. We have examples of boards and commissions being told the exact opposite of what KORA and KOMA require of elected officials, some even during this past year.

Open government is the law of the land in Kansas. Most of us expect — and the law demands — that all public business be conducted in the sunshine. But we can't expect elected officials to do the right thing unless they receive proper training about what the law requires.

In Texas, whose law we liberally borrowed for this bill, the attorney general's office provides such training. It has produced some tremendous programs on video that comprehensively address all aspects of its law. I watched the one on open meetings. It was an hour long. During the training, elected officials meet in groups and can ask questions and present scenarios that might come up along the way. It works.

There may be some cost involved in this endeavor, if it is done right. The Kansas Press Association wants you to know that we believe so strongly in this legislation that we will pay our share of the cost of producing the training materials. We believe a written, interactive program could be produced and completed online at very little expense.

An informed citizenry relies on a government that keeps it in the loop, that welcomes its participation in the political process and that discusses the issues of the day with the very people whom those issues affect and who ultimately pay the bills through their taxes.

SB 410 will help in that process.

Thank you.



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Testimony
SB 410
Senate Committee on Elections and Local Government
February 2, 2006
By
Harriet Lange, President
Kansas Association of Broadcasters

Mr. Chairman, Members of the Committee, I am Harriet Lange, president of the Kansas Association of Broadcasters (KAB). KAB serves a membership of free-over-the-air local broadcast stations in Kansas. We appreciate the opportunity to appear before you in support of SB 410.

We don't believe there is a high percentage of public officials in Kansas who purposefully try to circumvent the Kansas Open Records and Open Meetings laws. However, violations do occur and many times these violations may be due to public officials just not being informed about the requirements in KORA and KOMA.

We are aware that the state associations, like the Kansas Association of Counties, League of Kansas Municipalities, and Kansas Association of School Boards provide training for their members on open government and we applaud them for it. But we doubt they are reaching all of the officials who need the training? The passage of SB 410 will bring uniformity and consistency to training for public officials, and more importantly, it will promote openness and increase compliance with KORA and KOMA.

It is my understanding that SB 410 is modeled after a Texas law which passed the Texas legislature last year. Attached to my testimony is the front page of the Texas Attorney General's Open Government Training web site: http://www.oag.state.tx.us/opinopen/og_training.shtml Public officials in Texas may get their training on line by going to this web site. The training requires a minimum of one hour on open meetings and one hour on open records and training may not exceed a total of four hours. An investment by a public official of between two to four hours (at the official's convenience) to learn the law is not too much to ask from one who is charged with performing an important public function.

We urge passage of SB 410. Thank you for your consideration.

Elections and Local Government
2-02-06
Attachment 2

Open Government

Open Government Training Information

[Child Support](#)
[Consumer Protection](#)
[Crime Victim Services](#)
[Criminal Justice](#)
[Cyber Crimes](#)
[Kids' Page](#)
[Opinions](#)
[Open Government](#)
[Senior Texans](#)
[Texas-Mexico Border](#)

Quick Links:

- [Open Meetings Act training video](#)
- [Public Information Act training video](#)
- [Print course completion certificate\(s\) online](#)
- [Open Meetings Act handbook \(PDF\)](#)
- [Public Information Act handbook \(PDF\)](#)

To order free a DVD copy of the above training videos, call **1-800-252-8011**

Effective January 1, 2006, elected and appointed public officials are required by a new state law to receive training in Texas open government laws. The Office of the Attorney General offers free video training courses, which were developed in compliance with a mandate from the 79th Texas Legislature that the Attorney General establish the formal training necessary to ensure that all elected and appointed government officials have a good command of both open records and open meetings laws.

This Web site contains links and information designed to assist public officials and public information coordinators in complying with the open government training requirement and Texas open government laws.

Frequently Asked Questions about Open Government Training

- Why are public officials required to attend open government training?
- What does the open government training law require?
- When does the requirement for open government training take effect?
- How much training is required?
- What is the deadline for completing open government training?
- Who is required to complete the training?
- Are judicial officials and employees required to obtain open government training?
- What topics are covered by the training?
- Do all public officials have to receive training on the Open Meetings Act?
- Do all public officials have to receive training on the Public Information Act?
- Do officers of entities that are not "governmental bodies" have to comply with the open government training requirements?
- How can officials receive the required training?
- How can I obtain the Attorney General's Free video training?
- How do I obtain a course completion certificate once I have finished the Attorney General's free video training course?
- Can public officials who have already attended open government training in the past to opt-out of the new training requirements of

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[Charges for Public Information](#)

[Open Government Laws](#)

[Open Records Decisions](#)

[Open Records Letters Rulings](#)

[Recent Developments](#)

[If You Have Questions About an Open Records Memorandum Ruling](#)

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[Open Government Training](#)



LEAGUE OF WOMEN VOTERS® OF KANSAS

February 2, 2006

The Honorable Tim Huelskamp, Chair
Elections and Local Government Committee
The Kansas Senate

President
Janis McMillen
Overland Park

Chairman Huelskamp and members of the committee:

1st Vice President
Sharon Ailslieger
Wichita

I appreciate the opportunity to speak on behalf of the League of Women Voters of Kansas in support of SB 410. I commend the efforts embodied in this bill to bring more attention to the importance of the Kansas Open Meetings and Open Records Acts by proposing an educational program for our legislators.

2nd Vice President
Doris Slocombe
Emporia

Secretary
Carol Snyder
Overland Park

Nationally, the League of Women Voters is making Open Government an advocacy priority for this year. The League is sponsoring forums across the country as part of their "Openness in Government: Looking for the Sunshine" project. "Looking for the Sunshine" is an effort to broaden public awareness about the issues involved in, and the threats related to, accountability and transparency in government. Through earlier programs, we learned of the public's concern about a lack of openness in government, of a desire by citizens for greater transparency at all levels of government, and a desire for public input and involvement. While looking to continue efforts on this topic, we became more familiar with the ongoing concerns and efforts of journalists in this same area. We believe that this project, in conjunction with "Sunshine Week 2006", will contribute to the goal of more openness in government, for the benefit of the American public. The League plans to develop educational materials about federal, state and local laws concerning citizen access, the extent and types of threats to these laws that have occurred in recent years, and data on the increasing levels of information being put off-limits since 9-11.

Directors
Mary Ann Bradford
Topeka

Emma Doherty
Salina

Gwen Elliott
Topeka

Ellen Estes
Wichita

Linda Johnson
Manhattan

In reviewing some information on the website of Open The Government, I read an interesting statistic: In 2004, at least 62 new state laws expanded secrecy, while only 38 laws that strengthened open government. Perhaps, with the legislation this committee is proposing, Kansas can help tilt that balance in the opposite direction.

Bob Kruh
Manhattan

Carrie Moore
Lawrence

Certainly some violations of the open meetings and open records acts arise out of a lack of familiarity with the laws. This underscores a need to assure that law makers at all levels of government in this state are fully informed about the open meetings and open records laws. Further, I think such education should be provided to citizens who are appointed by elected persons to serve on governing and advisory boards.

Bill Powell
Salina

It is appropriate to close with a quote from the late Justice Louis Brandeis who said "Sunshine is the best disinfectant".

Thank you

Janis McMillen

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KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



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Testimony on **SB 410**
before the
Senate Elections and Local Government Committee

by

Jim Edwards, Governmental Relations Specialist
Kansas Association of School Boards

February 2, 2006

Chairman Huelskamp and Members of the Committee:

I thank you for the opportunity to appear before you today to support the concept of training embodied in **SB 410**. It should not come as a surprise to you that KASB believes school board members can benefit from training to effectively carry out their responsibilities and duties for their elected positions.

KASB has offered many times in both the House and Senate, the concept of mandatory training for school board members on a variety of subjects. This has been done due to the realization that the operational process of school boards is becoming more challenging and complex. The last time the Senate heard a mandatory training measure was in the 2004 session when **SB 374** made it to the Senate floor. During that floor debate, most Senators felt the purpose was good but establishing another level of bureaucracy within the Kansas State Department of Education to handle such programs was not good as it was recognized that KASB provides many of those programs already.

We stand ready to assist in offering this and other types of training to school board members to help ensure Kansas school district patrons and public at large is well served.

I would stand for questions.



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300 SW 8th, 3rd Floor
Topeka, KS 66603
(785) 272-2585

To: Senate Elections & Local Government
From: Kimberly Winn, LKM
Judy Moler, KAC
Date: February 2, 2006
Re: SB 410

Thank you for the opportunity to appear before you today on behalf of the member cities of the League of Kansas Municipalities (LKM) and the member counties of the Kansas Association of Counties (KAC). We believe that by and large public officials in this state act reasonably and there are no widespread violations of the Kansas Open Meetings Act (KOMA) and the Kansas Open Records Act (KORA). That being said, we are strong advocates for KOMA/KORA training and we have been training city and county officials on these Acts since their inception.

However, we believe that the approach spelled out in SB 410 is seriously flawed. As a result, we are offering a different approach to reach the same goal of educating public officials about KOMA and KORA.

- **Application to all public officials.** SB 410 applies to all public officials, both elected or appointed. While we believe that we can discern who falls into the category of an “elected” official, the term “appointed” is more vague. Technically, all city employees may fall under the term “appointed.” For example, K.S.A. 15-204 refers to the appointment of the municipal judge, clerk, treasurer, chief of policy, law enforcement officers, and “such other officers as deemed necessary.” We believe that mandated KOMA/KORA training should be limited to elected officials.
- **SB 410 is unworkable.** As written, SB 410 applies to well over 10,000 individuals in the state. It mandates that it is the responsibility of the Attorney General’s office to ensure that all 10,000 receive the desired training within 90 days of taking their oath of office. LKM and KAC put on numerous trainings of this type each year. The LKM training on KOMA/KORA is a four hour training with half of the time dedicated to KOMA and half dedicated to KORA. It is unclear whether there are even enough daylight hours in 90 days to cover 10,000 persons with this type of training.
- **SB 410 provides inadequate training.** The bill references a videotape option, we believe that is an inadequate substitute for the type of interactive training where individuals have the opportunity to ask questions and apply their knowledge to specific situations. In addition, section 1 (d) of the bill indicates that once the official has completed the training, whether via videotape or in person, they never have to complete the course again. It is our belief that such training should be provided after each election cycle in order to update individuals on new laws or technologies which may impact KOMA/KORA.
- **Alternative approach.** Because we strongly believe in providing adequate KOMA/KORA training, we are offering an alternative approach to mandated training as outlined below.

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Alternative Approach to KOMA/KORA Training

Section 1. Within 180 days after each election for a public body subject to the open meetings act, K.S.A. 75-4317 *et seq.* or the open records act, K.S.A. 45-215 *et seq.*, the freedom of information officer for the public body shall certify to the office of the attorney general that each individual who is an elected member of the public body has received a briefing regarding both the open meetings act and the open records act. Such briefing may be provided by an attorney representing the body, the freedom of information officer, or by attendance at any class which includes instruction in:

- (1) The general background of the legal requirements for open meetings and open records;
- (2) the applicability of the open meetings and open records acts to public bodies;
- (3) procedures and requirements regarding quorums, notice and recordkeeping under the open meetings act;
- (4) procedures and requirements of holding an open meeting;
- (5) procedures and requirements for holding an executive session or closed meeting;
- (6) procedures and requirements regarding complying with a request for inspection or copies of public records;
- (7) penalties and other consequences for failure to comply with the open meetings act or open records act.

Section 2. The failure of one or more members of a public body to complete the training required by this section shall not affect the validity of an action taken by such public body.

Benefits of this Approach

- **Better Training.** We believe that KOMA/KORA training should be more than watching a brief video tape. We believe that public officials should be trained on these topics in an interactive fashion with the opportunity to ask questions. In addition, this approach requires that such training be conducted after each election cycle, rather than completed as a one-time-only course.
- **Reduced Bureaucracy.** Rather than dealing with over 10,000 persons individually, the attorney general's office will be dealing only with the freedom of information officers directly.
- **More Workable.** Because this approach to mandated training offers officials the option of organizing such training for themselves or attending an established course, we believe it is a far more workable approach to making sure that the many public officials in this state are appropriately trained on these very important topics. We believe that the 180-day window is a much more realistic time frame. This is particularly true for city officials who are elected in April, sworn in in May, and must produce a budget by August. It would be next to impossible to have all city officials, most of whom have full time jobs elsewhere, to a training within 90 days. However, we believe it is reasonable to expect them to host or attend such a training within 180 days.

Kansas Open Records Manual

2005 Edition

**A Resource for
Freedom of Information Officers
and Other Local Government
Officials**

Prepared and published by the League of Kansas

Elections and Local Government
February 2, 2006
Attachment 6

Kansas Open Records Act

A Manual for Kansas Government Officials

Prepared and Published by

League of Kansas Municipalities
300 SW 8th Avenue
Topeka, Kansas 66603
(785) 354-9565/Fax (785) 354-4186

Updated by

Sandra Jacquot
General Counsel

About the League of Kansas Municipalities

Established by municipal officials in 1910, the League of Kansas Municipalities (LKM) is a voluntary, nonpartisan federation of over 560 Kansas cities. It operates as a governmental agency and is defined by state law as an instrumentality of its member cities. The powers and duties of LKM are prescribed by state law and in bylaws adopted by the voting delegates of its member cities. The mission of LKM shall be to unify, strengthen, and advocate for the interests of Kansas municipalities to advance the general welfare and promote the quality of life of the people who live within our cities.

Foreword

Across our nation Kansas has a reputation for good government, and it is due in no small part to our shared belief in open, accessible government. Many of our political traditions and aspirations are based on this commitment to openness, and any number of conflicts in our state's history can probably be traced to isolated failures to respect this deeply rooted value.

Since its enactment in 1984, the Kansas Open Records Act (KORA) has contained a body of minimum standards for the provision of open public records. During the past 21 years, League attorneys have been called on hundreds (if not thousands) of times to explain its intent, scope, and effect. On many occasions the League has advised legislative committees about the likely impact of proposed changes in KORA, urging at each opportunity that the legislature carefully balance the goal of open, accessible government with the many public and private interests affected by government action.

The League devotes considerable resources each year to training local officials to comply with the standards established by KORA. After more than two decades of experience, it is clear that KORA is far from perfect and, in some cases, it is difficult to follow. We feel duty-bound, however, to provide every opportunity to the municipal officials of our state to learn the basics about this important law and how to comply with its minimum standards.

After years of interpreting KORA and after numerous requests, the League is pleased to offer this updated informative manual on the subject for policymakers, attorneys, and administrators alike. It represents our most complete and considered advice on KORA to date. I want to acknowledge the contributions of Sandy Jacquot, who updated the current version of the KORA Manual, as well as other League staff who made valuable suggestions for its improvement.

Don Moler
Executive Director
August, 2005

Introduction

It has been about 25 years since the Kansas Legislature began the process of researching and adopting the Kansas Open Records Act (KORA), which finally became law in 1984. The Act marked a change in state policy to favor openness of records maintained by public entities. Public officials, however, should appreciate the fact that, although KORA creates additional work for local government employees the benefit is to foster honesty in the operation of government.

The original act contained 25 categories of records that were not subject to disclosure and the Legislature has added numerous other exemptions in the years since the Act became law. Local governments have always been the repositories for all types of records, a very small percentage actually generated by the government. As technology continues to change, the manner in which government maintains records changes. Further, there is an ever-growing demand by the public for information that local governments maintain. Thus, questions arise in city halls, county courthouses and other venues across the state about how to implement KORA.

Since the 2000 Kansas legislative session, the Kansas Legislature has made significant changes to KORA that are important for local government officials to know and implement. The intent of this manual is to serve as a resource for local freedom of information officers and other local government officials in developing their plans for implementation and understanding the law in general.

This manual is organized in a manner to facilitate its use by all local government officials but especially by the local freedom of information officer. The manual includes the following content:

- Chapter 1.** An introduction to KORA and its requirements, including the most recent legislative changes.
- Chapter 2.** Duties of the local freedom of information officer, and tips on responding to open records requests.
- Chapter 3.** Policies and procedures for implementation of KORA.
- Chapter 4.** Examples and explanations for most of the 47 exemptions to KORA.
- Appendix A.** The full text of the Kansas Open Records Act (KS.A. 45-215:250).
- Appendix B.** An inventory of records commonly retained by local governments.
- Appendix C.** Sample forms, ordinances and resolutions for administering and implementing KORA.
- Appendix D.** A listing of laws that close or restrict access to certain government records.
- Appendix E.** Kansas caselaw concerning KORA.
- Appendix F.** Attorney General's Opinions concerning KORA.

Chapter 1

Overview to the Kansas Open Records Act

"A Popular Government, without popular information, or the means of acquiring it is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance; and the people who mean to be their own Governors must arm themselves with the power that knowledge gives."

James Madison

I. Introduction

The Kansas Open Records Act (KORA) requires that documents and materials that fall within KORA's definition of "public records" shall be open for inspection by any person unless specifically directed otherwise by law. Except where public disclosure is expressly prohibited or where an exemption under KORA permits closure, all records relative to the operation of government shall be available to any person requesting such records. Public officials should remember that, although the exemptions listed in K.S.A. 45-221, as amended, authorize local governments to refuse the disclosure of certain records, unless closure is mandatory local officials should ask themselves why closure is necessary. In many cases, closure of the record is permissive and it would be in the best interest of the public and the governmental entity for the record to be released. In no event, however, should permissive disclosure be administered in an arbitrary or inconsistent manner.

In order to make the state policy favoring openness abundantly clear, K.S.A. 45-216 (a) states that KORA "shall be liberally construed and applied to promote such policy." Local governments should recognize that "liberal" construction of the law will mean that where policies and practices discourage, either directly or indirectly, public access to records, a burden of proof and persuasion will fall on the government to justify the legitimacy of such policies and practices.

KORA deals with "open" records but does not provide a definition of an open record. For purposes of this manual, an open record is a public record that must be made available to members of the public requesting access to such record.

II. A Brief Overview of KORA and Recent Legislative Changes

Since the adoption of KORA, much confusion has arisen about the scope of the legislation. In understanding the scope and application of KORA, public officials should first recognize what KORA does **not** affect. The act does not impact the following:

Any duty to retain a public record. (See K.S.A. 75-3501 *et seq.*)

Any authority to destroy a public record. (See K.S.A. 12-120 and 75-3501 *et seq.*)

The discretionary authority of a public official to "open" a record for inspection even though the particular record is **not** required to be made open for inspection.

Any other statutorily created duty to make available for public inspection a particular record. For example, K.S.A.10-1117 places a duty upon municipal clerks to permit inspection of certain financial records.

KORA creates a statutory right for members of the public to inspect and copy public records. It provides that, absent a statutory declaration or court order exempting a record from mandatory disclosure, there is a statutory right to inspect all publicly maintained records. The policies and procedures for providing records will be set forth in a later chapter.

Since the 2000 legislative session, many changes have been made to the KORA. By now, all governmental entities should have designated a Local Freedom of Information Officer (FIO). There are no requirements limiting who this individual may be, so municipalities have a great deal of flexibility in naming the FIO. Some cities have named their records custodian, often the city clerk, as the FIO. While some cities have questioned whether the records custodian may also be the FIO, there is nothing in the statute that prohibits this dual designation. Other cities have designated their city attorneys or city manager/administrators as the FIO. In counties, the county clerk is a logical choice for the FIO designation, although any other county official could be named. All of these designations are proper under the law. (See Chapter 2 for more details.)

The law further requires that municipalities make available in their administrative offices a brochure containing basic information about the rights of the public, the responsibilities of the agency and the procedures to request access to public records. A copy of a sample brochure can be found in Appendix C and may be obtained in quantity from LKM. This is an updated version of the original that was designed and produced after the 2000 legislative session.

A public agency that "knowingly violates" KORA or "intentionally fails to furnish information as required" by KORA is liable for the payment of a civil penalty of up to \$500. Such penalty may be awarded in a civil action brought in district court by the county or district attorney or the attorney general. In addition, the county or district attorney and/or the attorney general, in investigating a complaint, will have the power to subpoena witnesses and documents, take testimony under oath, examine documents relevant to a complaint, and serve interrogatories. In any action brought to enforce the provisions of KORA, the court will now be required to award attorneys fees to the prevailing party.

The KORA exemptions have been continuously amended since the major amendments occurred in the 2000 legislative session. The most recent changes include an expansion of the definition of what is available under the personnel exemption regarding compensation. The Legislature has now made clear that employment or employment-related contracts are open records. Certain security measures are now protected, as are domestic violence safehouses, and military discharge papers except to certain interested parties identified in the law.

The KORA sunset provision was extensively debated during the 2005 session, but was ultimately extended for five more years and all exemptions will now expire on July 1, 2010 unless affirmatively continued by the Legislature. This includes not just the KORA exemptions, but all statutory provisions that close any public record. All exemptions adopted in future legislative sessions will sunset five years after enactment, unless the Legislature acts to retain such exemption. The sunset provision provides criteria to be considered by the Legislature in reviewing each exemption and further provides that exemptions applying solely to the state court system or the Legislature do not expire with the remainder of exemptions. One final sunset provision makes records created before the date the exemption expires subject to disclosure as otherwise provided by law. It allows the Legislature the ultimate say as to whether the records

should be made open. Thus, all records now in existence that are currently not subject to disclosure could be opened by future acts of the Legislature.

A couple of other changes to KORA occurred in the 2005 legislative session. First, K.S.A. 45-221(a)(30), provides that records of a private nature may be withheld from a requester. K.S.A. 45-217 has been amended to provide a definition of "clearly unwarranted invasion of personal privacy." This is explained in a later section. In addition, a new provision requires the county or district attorney in each county to report to the attorney general all complaints received under KORA and the disposition of each complaint. The attorney general then must compile the information and publish the results, including the list of each entity subject to a complaint.

A last minute amendment during the conference committee hearing on the KORA bill during the 2000 Legislative session added a section amending K.S.A. 14-101 having to do with changes of the classification of cities. The position of the League is that by the addition of this nonuniform section, the entire enactment became nonuniform as to cities. Thus, cities may, by charter ordinance, legislate in the area of open records to fit the needs of the city. For the first time since KORA was enacted, cities have local control over the provisions of the act. Cities contemplating charter ordinances should be prudent in their approach and mindful of the public policy behind open government. It is likely that a charter ordinance exempting an agency from opening its records would be viewed with disfavor by the public, the media, the legislature and the attorney general. On the other hand, a charter ordinance protecting records containing individually identifiable information commonly thought to be private may be quite acceptable to the general public.

III. Right to Privacy

Since the original adoption of KORA, there has been a tension between the competing interests of open government and citizens' rights to privacy. Despite the obvious benefits of having a right to inspect public records under KORA, an individual's privacy rights have been eroded.

With the extensive involvement of all levels of government in the day-to-day lives of its citizens, it is no surprise that vast quantities of information relating to individuals are now in files, books and on tape in the possession of government offices. Indeed, the very effectiveness of government is dependent upon this information. But, is the public interest advanced by the wholesale disclosure of this information? These competing interests are not merely questions of individual rights versus the public interest, because the public interest encompasses the individual's right to privacy. The interests of society as a whole are advanced when the privacy rights of individuals are respected and, conversely, the liberty known to a free society has been compromised when the rights of its citizens, as individuals, are unnecessarily infringed upon.

The mere fact that a government has the power to collect information on a private citizen does not automatically mean the public has an absolute right to acquire the same information. There must be safeguards. Currently, many of those safeguards are found within the list of exemptions of KORA, scheduled again to sunset in 5 years. The most practical, and probably the best, safeguard will continue to be the common sense and reasonableness of the government officers and employees charged with maintaining public records. If a record does not fit within one of the specific categories of records that are not required to be made available to the public, but the records custodian believes a privacy interest is involved, the record may still be closed. The exemption states that closure is warranted for "[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted

invasion of personal privacy." K.S.A. 45-221(a)(30). Now, however, this is defined in K.S.A. 45-217(b) to mean "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." Thus, both prongs must be met. The information must be highly offensive and not of legitimate concern to the public. The following discussion explains the application of this particular exception.

In arriving at a determination as to whether disclosure of a particular requested government record will harm the privacy rights of an individual, the public official may want to apply a "reasonable person" test. For example, the records custodian or FIO would evaluate whether disclosure of the information contained in the requested record would outrage, shame or humiliate a reasonable person of ordinary sensibilities. The United States Supreme Court has also offered the following test for determining whether a privacy right may be violated by disclosure of a record:

- (1) does the person have an actual or subjective expectation that the information would not be disclosed (e.g., it was given in confidence); and
- (2) does society recognize the expectation of privacy as legitimate or reasonable? *Nixon v. Administrator of General Services*, 433 U.S. 425, 458(1977).

In applying this test, it is helpful to place oneself in the shoes of the person about whom the record contains information, but in so doing the official must keep in mind that KORA presumes a record to be open and that it recognizes nondisclosure of a record only where such would amount to a "clearly unwarranted invasion of personal privacy."

No matter how conscientious a records custodian is in performing the analysis, there will be situations where it is not clear whether a privacy right violation would occur if the request for a record is honored. In such cases, the official is strongly urged to contact the attorney representing the local unit of government, the person whose privacy interests are at issue, or both. This would provide a second level of analysis by legal counsel for the agency, take the burden off of the local records custodian or freedom of information officer and allow the person(s) affected by disclosure to have a meaningful opportunity to challenge disclosure. For cities and other agencies that routinely experience these types of situations, it is advisable to have a procedure in place for review and processing requests. Remember, only if an agency knowingly or intentionally violates the provisions of KORA will the agency be liable for a civil penalty. Requests that fall in the gray area of the act and the agency acts in good faith in providing or not providing the record should not result in adverse consequences for the agency.

IV. Conclusion

In response to an open records request, the records custodian or local freedom of information officer should answer six fundamental questions.

- (1) Is the entity to whom the request is directed a "public agency?" Most governmental entities are subject to KORA. There is some question regarding officers of entities whose offices are open less than 35 hours per week. The League recommends as good policy, however, that basic records of interest to the public be made available as much as possible.

- (2) If yes, is the requested record one that was "made, maintained or kept" by the public agency?
- (3) If yes, is the requested record a "public record" under KORA?
- (4) If yes, is the public record exempted from mandatory disclosure under K.S.A. 45-221, as amended or by charter ordinance in the case of a city?
- (5) If the public record is not exempted under K.S.A. 45-221, (or by charter ordinance in the case of a city) has the request been properly made under the agency's policies? For consistency, if the agency has a policy, it should routinely follow that policy. A technicality may not be used to deny an open records request.
- (6) If disclosure is neither mandatory nor prohibited under KORA, is a discretionary decision to disclose the record likely to result in violation of the privacy rights of an individual? Again, discretionary disclosure should be applied in such a way to avoid allegations of arbitrariness.

By correctly determining the answers to the above questions, records custodians should be able to determine whether the record is one that the public has a right to inspect. The local freedom of information officer and the agency's attorney are resources for the records custodian if there are still questions or concerns regarding specific records.

Chapter 2

Local Freedom of Information Officers

I. Introduction

Every city should have appointed a Local Freedom of Information Officer (FIO), but it would be wise to make sure this designation resides in some city official. Even the League of Kansas Municipalities, as a public agency, has an FIO. A sample resolution appointing the FIO can be found in Appendix C. Many agencies continue to be concerned with the nuts and bolts of the FIO's duties and how this differs from how they handled open records requests in the past. What most agencies will find is that nothing of consequence has changed, but their services to the public have improved. Really, when the requirement is distilled down to the duties of the FIO, most agencies will understand that having a person designated to be responsive to the needs of the citizens regarding open records is good public policy. This requirement is not meant to be burdensome to agencies. Rather, the addition of the FIO should improve communication between the general public and the agency and facilitate assisting members of the general public. Many cities have inquired as to whether they need to appoint more than one FIO for departments that handle their own records requests, such as the police department. The answer is no; one FIO per governmental entity is all that is required and that person will not need unfettered access to all agency records to perform the duties. On the other hand, nothing in the Act prohibits an agency from having more than one FIO. For example, the City may want its library board to appoint an FIO for the library or the county may want its hospital to have its own FIO. This is permissible under the Act.

This chapter will address the duties of the FIO and common situations that arise for agencies when citizens make open records requests. Other opportunities for education will be provided by the League on an ongoing basis, such as Municipal Leadership Academy courses and sessions at the annual conference.

II. Duties of the Local Freedom of Information Officer

- (1) Prepare and provide educational materials and information concerning the open records act;

The FIO needs to become familiar with KORA and be able to answer questions asked by citizens. Citizens will want to know what records are available, how long it will take to obtain the records, how much it will cost and why certain records are not open. The body of this manual will answer all of those questions. An FIO may want to prepare a list of commonly requested records that are available to citizens and have that list in a location that is accessible to the public. If the agency does not have a form to request records, the FIO may prepare the form. The brochure referred to below is also a source of information for citizens. In general, the more informed about KORA the FIO can become, the better able he or she will be to educate the public about the act.

- (2) be available to assist the public agency and members of the general public to resolve disputes relating to the open records act;

Currently, the records custodian assists members of the general public when such individuals come in to request records. This duty is no different than what is currently a function of the

records custodian. The FIO may be a contact person for citizens requesting records and should facilitate filling the request. Some municipalities have called the League with concerns about whether the FIO and records custodian may be the same person. The concern arises in the language about assisting in resolving disputes between the agency and the citizen and whether it is a conflict to have the same person doing both duties. There is no prohibition in KORA against designating the same person. In large agencies, each department may have a different records custodian, but it will have only one FIO.

In the event the records custodian is a different person than the FIO, the FIO will be a resource for the custodian. The FIO can answer questions for the custodian and can act as a facilitator to help determine what records the requester is wanting. Oftentimes requesters ask for one record, such as the mayor's nonexistent expense account, when they really want to see the city's check register. This is an actual example from the sting operation done by 19 newspapers from across the state several years ago. Although the newspapers were concerned when an agency asked questions of the requester, most often the questions were to assist the requester in obtaining the right records. Contrary to common belief, there is no prohibition against asking questions of the requester to aid in filling the request.

In addition, the FIO can explain to citizens why a record is not available or why the expense is more than the citizen anticipated. The FIO is, in essence, a public relations officer and KORA does not confer upon the FIO any enforcement powers. Typically, the records custodian makes the determination about whether a record is or is not subject to disclosure. An agency may, however, authorize the FIO to be the ultimate authority on records requests. Regardless of who has the duty of making the disclosure decision, it would be helpful for the agency to have a policy of sending the FIO copies of all records requests.

If the FIO and the records custodian are the same person, the primary duty under this subsection of KORA will be to assist citizens and facilitate requests. If the requester still disputes the decision by the agency regarding the status of a record, the requester has the legal recourse of reporting the matter to the Attorney General or filing an action in district court. With the additional attention given to citizens requesting records, however, the result should be less unresolved disputes and more satisfied members of the general public.

- (3) respond to inquiries relating to the open records act;

Generally, all inquiries about KORA should be referred to the FIO. Setting forth a policy for the agency on how to process requests is important, even for the smallest agency. This will ensure consistency in how the requests are handled and gives the FIO something concrete to refer to in discussing matters with members of the general public. Under this subsection, the FIO should be a resource, not only for the general public, but also for staff members within the agency. The sample documents found in Appendix C provide the basic framework for the FIO to assist the agency in adopting a comprehensive records policy.

- (4) establish the requirements for the content, size, shape and other physical characteristics of a brochure required to be displayed or distributed or otherwise made available to the public under the open records act. In establishing such requirements for the content of the brochure, the local freedom of information officer shall include plainly written basic information about the rights of a requester, the responsibilities of a public agency, and the procedures for inspecting and obtaining a copy of public records under the open records act.

The League and the Kansas Association of Counties, in partnership, have designed and now updated a brochure for cities and counties to use to fulfill the requirements under this subsection. Any city or county may order more brochures for a minimal amount to cover the cost of printing. The text of this brochure can be found in Appendix C. Municipalities wishing to design and adopt their own brochure may do so. The important thing is that municipalities, facilitated by the FIO, should have a brochure available for any member of the general public wanting more information about KORA. It is the responsibility of the records custodian to make sure the brochures are displayed or made available to the public in the administrative offices of the municipality.

III. Responding to Open Records Requests

Regardless of the agency size or the volume of open records requests, the FIO will be called upon to perform a variety of tasks. How those tasks are performed is extremely important in how the general public views the agency. Citizen requests come in all shapes and sizes and common sense and courtesy are the FIO's most valuable tools in handling the requests.

In some communities, there are citizens who make frequent or voluminous records requests that can become burdensome to the agency. Maybe the individual is trying to be disruptive, or maybe the individual simply does not know exactly what records to request. The most effective method of responding to those requests is to ascertain exactly what records the citizen wants if the individual is amenable to questions. Then let the individual know approximately how many pages it will take to fulfill the request, the cost and how long it will take to make copies. While an agency does not have to provide records if the request is meant to disrupt the agency or if the request is voluminous, it is always better to comply with the request, if possible. Always consult with the agency's attorney before you deny a request as burdensome, so the attorney can objectively analyze whether this is a case worth taking to court if the citizen sues.

If the request is for a massive number of pages or if the individual does not want to answer questions to narrow down the request, try to get the citizen to go through the records and indicate exactly what pages to copy. Obviously, this can only be done if all of the records in the group are open records and there is no concern about allowing the requester access to original records. The advantage is that it allows the citizen to do the time-consuming work of going through the records and leaves the FIO and/or records custodian free to do other tasks. This does not mean that the FIO or records custodian should not supervise this process. Local officials have a statutory duty to monitor the records. Again, courtesy is the key. It is much more difficult for people to be angry and rude when faced with patience and kindness.

Another situation arises under K.S.A. 45-220(c) when a citizen making an open records request is willing to sign a statement agreeing not to use names and addresses obtained through the request for commercial purposes, but agency officials suspect the citizen is not being truthful. The issue is whether or not to release the records. While there are many variables and not every situation lends itself to an easy answer, usually the best course of action is to take the agreement at face value. It is difficult, if not impossible, for an agency to take action based upon what may or may not occur. Certainly, if the agency subsequently learns that a requester has, in fact, used names and addresses to sell or attempt to sell goods or services, such information should be turned over to the agency's attorney for appropriate action. Making citizens aware that the agency considers such commercial use a serious matter is not necessarily bad. The FIO may want to add a statement on the form requesters sign that the agency pursues violators of this requirement.

While the list of challenges in responding to records requests could go on and on, the key for FIO's in any agency is to be familiar with the requirements of KORA. The following two chapters will provide the framework necessary for the FIO and records custodian to respond to most records requests. Do not hesitate, however, to contact your agency attorney if you run into situations without an apparent ready solution.

Chapter 3

Implementation of KORA: Policies and Procedures

I. Agencies and Records Subject to KORA

Only entities that meet KORA's definition of "public agency" are subject to the law's mandates. If an entity is a public agency, only those records that are "public records" as defined by KORA are subject to its disclosure requirements.

Public Agency

Public Agency is defined as "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 . . . by public funds (of) . . . the state or any political or taxing subdivision of the state." (K.S.A. 45-217(f))

Examples of Public Agencies

Cities	Township
Counties	Unified School Districts

Three exceptions to the definition of public agency:

- (1) Public agency does not include "any entity solely by reason of payment from public funds for property, goods or services of such an entity. . . ."
 - This is to ensure that no person, organization or business is viewed as a public agency merely because of a business relationship with a public body. No duty requires these exempted persons and entities to provide the public with access to records they themselves hold as a consultant or a vendor. The exception, enacted during the 2005 legislative session, is for not-for-profit entities that receive an aggregated amount of \$350 or more per year of public funds. These entities must make available upon request, documentation of the receipt and expenditure of the public funds received by the entity. If the entity does not segregate the funds, the entire accounting of receipts and expenditures is open to the public. There are also reporting requirements for non-profit entities. Exceptions to this new requirement are health care providers, individual persons and for profit corporations or partnerships. Thus, local chambers of commerce that receive funding from cities and counties in excess of the threshold amount must comply with the new provision. See 2005 Kan. Sess. Laws, Ch. 126, Sec. 8.
 - One must determine whether an entity is an agent of the public agency or an independent contractor. Three factors must be examined to determine this:

- (1) Function — is the entity performing a public service;
 - (2) Control — is it subject to the control of the municipality; and
 - (3) Funds — is it operating in whole or part with public moneys?
- (2) Public agency does not include “. . . any municipal judge, judge of the district court, judge of the court of appeals or justice of the supreme court”
- This exemption applies to the judge, not the court.
- (3) Public agency does not include “. . . any officer or employee of the state or a 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.”
- This exception only exempts an officer or employee whose office is open less than 35 hours a week from the definition of public agency. It is not an exemption applicable to the public office or agency itself.
 - Even if an individual officer or employee is not a public agency, in most situations his or her employer (e.g., a city or county) is still considered a public agency subject to KORA. For this reason, an officer or employee of a municipality who has fewer than 35 office hours per week still may be required to implement KORA if that individual has been assigned the duties of records custodian. Thus, although KORA may not compel an individual to disclose records, his or her employer may do so.

Example

Even if a city's animal license bureau is open only 10 hours a week, the public records within that office are subject to disclosure under KORA. A citizen may simply direct his or her request to the official custodian of the animal bureau records. Although the animal control officer who works part-time in that office cannot be compelled to disclose records under KORA, the official custodian in charge of the bureau's records must comply with a valid KORA request. Furthermore, nothing in KORA prevents the city from assigning KORA duties to the animal control officer during his or her office hours.

- The definition of public agency can result in some absurd results when taken to its literal extreme. If every officer or employee is considered a public agency, then one could argue that each and every officer/employee must establish their own open records policy and appoint their own custodian. Perhaps the best interpretation of this anomaly (at least at the local government level) is to consider the employee/officer as being under an umbrella public agency (e.g., city or county) and that as long as the municipality has established comprehensive, organization-wide KORA policies and procedures, those under its umbrella will also be presumed to be in compliance with KORA. Admittedly, this provision of KORA is ambiguous. Therefore, it is advisable for an agency to comply with the spirit and intent of KORA to the extent practical for the agency.

• Public Record _____

Public Record is defined as "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency." (K.S.A. 45-217(f))

The definition of public record provides three key phrases to focus on when deciding which records are subject to KORA:

- (1) "Any recorded information" could be liberally interpreted to include any material prepared with the intent of communicating knowledge of some type. "Information" is final evidence of the knowledge meant to be communicated and should be differentiated from drafts, memoranda, proposals, notes, etc. which are forerunners of records.
- (2) "Regardless of form or characteristic" is clearly meant to encompass all forms of recorded information — paper, videotape, audiotape, compact discs (CDs) photographs, slides, computer disks or tape, and any other digital information.
- (3) "Made, maintained or kept by or . . . in the possession of" includes records simply in the possession of a public agency, even if they have no valid reason to possess the record.
 - This also includes all records maintained in the convenient, appropriate or customary methods of discharging the duties of a public agency, be that person or entity.

Email would be considered a public record if it meets the above definition.

Three exceptions to the definition of "public record:"

- (1) "Public record" does not include ". . . records . . . owned by a private person or entity and are not related to functions, activities, programs or operations funded by public funds. . . ."
 - This exception covers records in the possession of the public agency but which are not property of the agency and are not related to a governmental function or operation.
 - This ensures that a privately owned record, not related to government, which comes into the possession of a public agency is not automatically an open public record.
- (2) "Public record" does not include ". . . 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 taxing subdivision of the state."
 - This exception clearly includes city, county and township governing bodies, and school boards.
 - This goes to exempt the individual's personal records, but not the records of the office that they hold.

- It is not clear whether airport, cemetery, fire and other boards and commissions are covered.
- (3) "Public record" does not include ". . . records of employers related to the employers' individually identifiable contributions made on behalf of employees for workers compensation, social security, unemployment insurance or retirement."
- This exception is not meant to apply to lump sum payments, but only to those that could identify individuals.

Public Record *shall not* include:

- Records owned by a private person or entity that are not related to activities or operations funded by public funds;
- Records maintained by a member of the legislature;
- Records maintained by an individual who is a member of the governing body of any political taxing subdivision of the state;
- Records of an employer's contributions to an employee's individual workers compensation, social security, unemployment insurance or retirement benefits.

II. Adopting an Open Records Policy: Procedures for Inspection and Copying

KORA requires public agencies to "adopt procedures to be followed in requesting access to and obtaining copies of public records. . . ." K.S.A. 45-220(a).

The open records act (KORA) requires public agencies to adopt policies and procedures to be followed when presented with an open records request. The goal of such procedures is two-fold:

- (1) to provide full access to public records in a manner that does not excessively disrupt the agency's other essential functions, and
- (2) to preserve and protect public records from damage and disorganization.

Municipalities should formally establish written procedures rather than mere verbal procedures. Only general policy objectives are established by KORA; specific details are left to public agencies. It is up to each individual agency to decide whether to adopt one blanket procedure for all offices or to allow each office to adopt its own procedure.

The sample policies establishing record access and inspection procedures set out in Appendix C take a middle ground:

- The sample policy in Appendix C establishes basic procedures to be followed by each records custodian and Freedom of Information Officer (FIO) but also authorizes each custodian to develop those procedures which are necessary for a particular office so

long as those procedures do not conflict with those adopted by the agency or with KORA.

- The middle ground approach is recommended because it simultaneously ensures consistency by records custodians of basic record policies, yet has the flexibility necessary for custodians to establish procedures which work best within their respective offices for both the requester and the public agency.

A number of variables that municipalities may encounter when establishing their policies are discussed throughout the remainder of this chapter — e.g., suitable facilities, how to handle requests, what fees may be charged, etc.

III. KORA Officials and Facilities

Records Custodian & FIO

One of the most critical factors for achieving compliance with KORA will be the appointment of responsible and intelligent individuals as records custodian and FIO. Without custodians and FIOs who understand and appreciate KORA and who are willing to exercise their judgment, even the most well drafted open records policies and procedures are meaningless and unworkable.

Agencies must keep two duties in mind when selecting records custodians:

- (1) the duty to preserve and protect public records, and
- (2) the duty to make public records available for public inspection in accordance with KORA.

In addition to the traditional duties of protecting, preserving and making records available to the public, the custodian must also make available to the public a brochure explaining KORA. This brochure, in a form prescribed by the FIO, must be displayed, distributed or otherwise made available to the public.

KORA does not specify the number of custodians a public agency should designate. That decision must be made locally. Factors to determine the number of custodians include:

- whether the local government unit has centralized its record holdings;
- the size of the public agency;
- the number and type of records it holds; and
- how many custodians are needed to insure that the adopted policies and procedures are efficiently carried out.

Can a person act as a custodian even though he or she has not been designated as a custodian?

KORA defines an "official custodian" as: "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." K.S.A. 45-217(e).

This language puts agencies on notice that if they fail to designate a particular officer or employee as the exclusive custodian of a specific set of records, the officer or employee who is "responsible for the maintenance" of those records becomes the de facto custodian.

- If an agency wants to ensure accountability and consistency of record requests, it must designate an exclusive custodian or designate the FIO to respond to requests.
- It is recommended that the designation of records custodian be made by a formal act of the governing body responsible for the public agency.

Suitable Facilities

KORA simply requires the public agency to provide a "suitable" facility.

- At a minimum, agencies will not want to designate facilities which are oppressive to the person inspecting or copying the record.
- Facilities must be made accessible to the physically disabled in order to comply with the Americans with Disabilities Act.

Does the "suitability" requirement mandate that a public agency provide photocopiers or other commonly used means of mechanical production?

An agency is not required to purchase equipment.

- If a photocopier is already available for use by the public agency, the agency should extend the opportunity to the public to use it, or make copies for the requester, absent some compelling reason.
- The requester must agree to pay for that privilege.

Hours for Inspection and Copying

K.S.A. 45-218(b) provides that a person may inspect or copy a record "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."

This means two things:

- (1) A person may make a record request any time a public agency office is open to the public; and
- (2) On any business day (Monday through Friday) when a public agency does not maintain "regular office hours," it must designate "reasonable hours" for when persons may inspect and copy records.

KORA does not require that an office must be open a minimum number of hours each business day. An office is simply open (all or part of the day) for a particular business day or it is not open.

K.S.A. 45-220(d) provides that when a public agency has established additional hours for business days when there are not regular office hours it may require that any requester provide notice up to 24 hours in advance of the fact that they intend to make a record request. Written notice shall not be required in such a case.

Supervision of Inspection and Copying _____

KORA shows a preference for involvement by the records custodian while records are inspected and copied.

K.S.A. 45-219(b) states "Copies. . .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."

Custodians have a general duty to supervise to the extent necessary to protect against theft of, or alteration or damage to, a public record.

Removal of Records _____

KORA indicates a preference for inspecting and copying records within the physical confines of the public agency for protection and preservation of the records.

Many agencies will not find on-site inspection and copying practical. If off-site facilities must be used, an agency should attempt, at a minimum, to have all original records handled at all times by a records custodian.

KORA requires that original records be removed from the public agency only with written permission of the records custodian.

A "removal request" form has been included in Appendix C.

This form is recommended for those instances where non-original, replaceable records have been requested and the inspection or copying of those records is more practical or desirable for the requester and /or the agency in a location outside the office of the public agency.

IV. Implementation of KORA: Public Access to Public Records

KORA requires that all open public records be made available for inspection by any person and that all public agencies provide suitable facilities for inspection of records.

Who May Request a Record?

K.S.A. 45-218(b) of KORA provides that upon request for inspection of a public record, any person has the right to make such an inspection during a public agency's regular office hours, or during hours established by a public agency for purpose of record inspections which are in addition to its regular hours.

KORA places no limitation upon who may make a record request — child, adult, resident, non-resident, alien or U.S. citizen.

Agencies are also advised that KORA's use of the word "person" rather than "individual" is significant in that "person" encompasses political and corporate entities — see K.S.A. 77-201. Record requests made on behalf of another public agency, a trade organization, or a business corporation should be treated the same as citizen requests.

Agencies are also advised to require that the individual who signed the request form be the person who will be provided the record for inspection, or provided copies. If an individual other than the requester arrives to make the record inspection or pick up the requested copies, that individual should be required to either complete a new request form or provide the information necessary to establish that that individual is acting on behalf of the requester.

Requests by Mail or Telephone _____

KORA does not speak directly to record requests which are made via mail, telephone or other non face-to-face methods.

There would appear to be no problem with a local policy which accepts letters, telephone messages, etc., requesting that a particular record be made available for inspection at a certain time. Similarly, little difficulty is seen with a local policy of producing copies of records upon a telephone or letter request so long as the copies are picked up and a request form is completed. An agency may wish to require full or partial prepayment in such cases in order to protect its financial investment in honoring such requests.

Agencies that choose to adopt a policy requiring the requester to appear in person to inspect or copy a record should take into account that researchers, genealogists and other parties, including physically handicapped persons, often rely upon the mail or telephone to obtain necessary information. *Agencies are at least encouraged to allow some degree of flexibility to the requirement of on-site inspection.*

Priorities in Handling Requests _____

Is it permissible, or good policy, to give some requesters preferential treatment such as routine access to records not required to be disclosed under KORA?

- KORA does not provide for any preferential treatment, and such may in fact be contrary to its democratic spirit.

- Adopting a policy of preferential treatment may set a dangerous precedent for the agency regarding the exercise of discretionary disclosure of records.
- Whether an agency elects to provide "shortcuts" or waive or reduce copying fees out of a desire to expedite the dissemination of news is up to the agency.
- One practical effect of non-preferential treatment for the media is that the local newspaper would find itself filling out record inspection and copying forms, leaving its name on such forms as evidence of interest in a particular record or category of records, and paying access and copying fees.

Information Required of a Requester _____

A public agency has authority under KORA to require that a record requester provide the following:

- name,
- address, and
- necessary information to identify the record requested.

The agency can require that this information be placed in written form. However, a public agency is specifically prohibited from requiring additional facts from the requester. As stated earlier, however, nothing prohibits the agency from attempting to gather the necessary information to fulfill the records request. In addition, the agency may not require that the request be in any particular form. K.S.A. 45-220(b).

A public agency may not require that a requester show a "need," "purpose" or "special interest" for a record as a necessary condition of receiving it. In fact, such a requirement is entirely contrary to the purpose of KORA.

There is no requirement that a request be for a lawful, legitimate purpose. If a custodian is confronted with evidence that the requester will be putting a record to unlawful uses, the custodian should still provide the record. Policing KORA is not within the authority of the records custodian. A telephone call to the agency attorney relaying one's suspicions, however, may be in order.

Specificity of Requests _____

A request does not have to be very specific.

KORA states that "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." K.S.A. 45-220 (b).

When the requester has ready access to an index of public records, it is consistent with KORA to require the requester to specify the following: which volume, page, entry, etc., identifies the record.

A record request for access to voluminous records compiled over a longer period of time is not improper merely because of its immensity or the staff time needed to comply with the request.

- The exception to this is the KORA provision that a request can be denied when the custodian believes it will create an "unreasonable burden" upon the agency. This reason for denial should rarely be utilized, and then only after consultation with the agency's attorney.

Time Constraints

Every valid KORA request is directed to be acted upon "as soon as possible" but no later than the third business day following the date of the request. K.S.A. 45-218(d).

Example

- A request made on Friday must be responded to by Wednesday.
- A request made on Monday must be responded to by Thursday.

If access to a record is not granted immediately upon request, the records custodian must give a "detailed explanation of the cause for further delay" and also must state when and where the record will be made available to the requester.

- A reasonable interpretation of the duty to act upon a request is that by informing the requester, at the time of presenting the request, that the record sought is an open public record and will be made available to the requester, a records custodian has met the duty imposed by KORA.
- "Acted upon" does not mean that immediate delivery of a requested record is mandatory. Mere acceptance of the request along with an indication that it will be followed up on, or denied, is "acting upon" the request.

Triggering the Three-Day Period

K.S.A. 45-218(c) provides language to the effect that a request is not a request, for purposes of the three-day period, until it has been made to the custodian of the record sought. If an agency only has one records custodian, the response time is triggered at the time of the request, regardless of where the record is located.

Example

- A request made to the city clerk for a record for which the city treasurer is the custodian does not trigger the three-day response period.
- The city clerk in this example is under a duty to give the requester the name and location of the custodian of the requested record [if that custodian is known to or readily ascertainable by the city clerk]. Thus, the mere fact that a request was made to some city official does not commence the three-day period.
- If the city clerk is the designated records custodian for the city, the three-day period is triggered.

V. Denying Access to Records

When a request for access to a record is denied, the custodian is under a duty to provide the requester a written statement of the grounds for the denial *when such a statement is requested by the person seeking access to the record*. K.S.A. 45-218(d).

- Records custodians should consider themselves having an implied duty to inform requesters of their "right" to this written statement.
- Either verbal notice or posting a sign containing this information will meet this statutory duty.

Access Denial Statement _____

Records custodians are urged to routinely complete a record access denial form in **all** instances where a request is denied. Even if the requester does not ask for a written statement, or declines one if offered, the custodian will still find it advantageous to complete the form and retain documentation of the time and nature of the request, and the legal basis for denial.

KORA states that, "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." K.S.A. 45-218(d).

The custodian "shall cite the specific provision of law" relied upon in denying the request. This means specifying which exemption under K.S.A. 45-221 is applicable, or that the record is not a public record under K.S.A. 45-217(f). Custodians should also cite federal laws and sources other than KORA which are relevant to the denial.

The statement denying access is to be provided to the requester no later than the end of the third business day following the date that the request for the statement is received. Custodians should honor this request regardless of whether it is made one day, one week or one year after the date of the original denial of the record request.

Requests for denial statements should only be honored when made by the person whose request was denied or a person acting on behalf of and under the direction of the requester. No other person has a right to make the demand for the denial statement.

Are records of record request denials "public records?"
Yes, and a periodic review of record request denials may be valuable to records custodians to ensure consistency among denials.

Reasons For Denying Requests

There are two basic reasons upon which a records custodian may rely in denying a request for inspection of an existing record:

- (1) The requested record is not a record required by law to be disclosed.
 - Here, denial is based upon the nature of the record requested.
 - The custodian is telling the requester that the record sought is either:
 - (a) not a public record covered by KORA; or
 - (b) is a record specifically exempted by KORA from the requirement for mandatory disclosure.
- (2) The requested record is a record required by law to be disclosed, but the request would create an unreasonable burden upon the public agency in producing the record or was made with the intent to disrupt the agency.

K.S.A. 45-218(e) contains the language referring to disruptive and burdensome requests. KORA states that for a request to be disruptive, it must be made repeatedly with the intent to disrupt essential functions of the public agency.

- A custodian who utilizes this ground for denial has the burden of proof in any subsequent legal challenge. Therefore, the custodian will need to document:
 - (1) his or her basis for concluding that the request was done with intent to disrupt;
 - (2) the fact that repeated requests have been made; and
 - (3) the fact that the requests disrupted the essential functions of the public agency or that if the requests had been honored they would have disrupted essential functions of the public agency.
- What is considered disruptive or what a public agency's essential functions are will undoubtedly vary with each office. If the repeated requests were for the same or similar records, that would be evidence of disruptive conduct.
- Custodians should realize that their good judgment will be tested here.
- The word "producing" in the phrase "unreasonable burden upon the public agency in producing the record" is not defined in KORA, but taken in context, should be viewed that if the request creates an unreasonable burden upon the agency in creation, finding, or delivery of records it can be lawfully denied.

Inconvenience v. Unreasonable Burden

It is likely not material that different public agencies have different capacities to respond to requests.

Requests made to agencies having limited staff resources or a weighty workload may be inconveniences for the agency, but these are not unreasonable burdens. Mere inconveniences which are beyond the control of the requester should not be used to supersede the rights of the public to access records. The custodian should recognize that the use of the grounds for denial is discretionary, not mandatory. The custodian should also recognize that whenever he or she

has the occasion to choose between various grounds for a request denial, the better choice will normally be that the type of record requested is exempt from KORA.

VI. Copying Public Records

The general rule is that if a person has access to a record under KORA, then that person has the right to make or receive a copy of it. K.S.A. 45-219.

“Copy” includes handwritten extracts or abstracts from a record as well as photocopying or other reproduction of the record.

KORA emphasizes the duty of records custodians to protect public records.

K.S.A. 45-219(b) provides that “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.”

When copying at the site of the records is not practical, the custodian may allow arrangements to be made for the use of other facilities to enable copying. When other facilities are used for copying, the cost is to be paid by the person requesting the copy.

Denying Copies _____

The single specific exception to the right to make or receive a copy of a public record pertains to public records which are “. . . 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. . . .” K.S.A. 45-219(a).

- This exception does not enable a public agency to convert its paper records into microfilm, microfiche or other video or audio form and thereby avoid the duty to provide copies upon request. If a public agency does routinely convert records to a microfilm, microfiche or similar form, it should take necessary steps to ensure that appropriate equipment is available to the public which would enable it to copy documents from the microfilm, microfiche, etc.

There is also no duty to make copies of the above-mentioned “. . . items or devices which are copyrighted by a person other than the public agency.”

Additional Duties Under KORA _____

K.S.A. 45-220 directs public agencies to undertake the following:

- (1) Each public agency must adopt procedures to be followed in requesting access to and obtaining copies of public records. Such procedures may include:
 - (a) Providing full access to open public records;
 - (b) protecting public records from damage and disorganization;
 - (c) preventing excessive disruption of the public agency's essential functions;
 - (d) providing assistance and information upon request; and
 - (e) ensuring efficient and timely action in response to requests for inspection of records.
- (2) If the public agency requires a written request for inspection of records, the form must be no more complex than to require the requester's name, address, and the information necessary to identify the records being requested.
- (3) If a public agency does not maintain regular office hours on any business day, it is to establish for those days "reasonable hours" when persons may inspect and copy that public agency's records. "Business day" is defined at K.S.A. 45-217(a).
- (4) All official records custodians are to designate necessary persons to carry out the duties of custodians to ensure that a custodian is available during the regular business hours of the public agency. The FIO may assist in carrying out these duties.
- (5) Every public agency is to provide, upon request, the following information:
 - (a) The principal office of the agency, its regular office hours and any other hours established for record inspection or copying purposes;
 - (b) title and address of the agency's official custodian and other custodians ordinarily available;
 - (c) fees charged for inspecting or copying records; and
 - (d) procedures to be followed in requesting inspection or copying of records.

Remember that these duties are in addition to those recently assigned to the FIO.

VII. Fees for Accessing and Copying Records

The specific provisions in KORA dealing with the establishment and collection of fees for record inspection and copies are set out in K.S.A. 45-219.

K.S.A. 45-219(c) states that "each public agency may prescribe reasonable fees for providing access to or furnishing copies of public records. . . ."

Reasonableness means that fees for copying are not to "exceed the actual cost of furnishing copies, including the cost of staff time required to make the information available." No comparable language exists for interpreting reasonable record access fees. The exception is in the case of "records maintained on computer facilities" — in such instances the access fee is to "include only the cost of any computer services, including staff time required."

Overall, reasonableness of a fee is in the eye of the public agency which has incurred the costs, and is not to be viewed from the perspective of the record requester. The public agency should remember that the financial resources of the record requester are irrelevant, and should gear fees to the costs incurred.

Providing access to and copies of open public records is a duty, not a revenue-producing function of governments. In setting fees, agencies should be cognizant of the fact that the legislature continues to scrutinize agencies' responses to open requests, including the fees.

Setting Fees

A public agency may charge an access fee and may require advance payment of such fee. The following guidelines should be applied in setting the fees.

- The fees must be reasonable — this means that they are not to be revenue-producing, but should be set no higher than needed to cover the actual cost of providing the access.
- Reasonableness should be interpreted as being relative to the agency *not* to the financial capabilities of the requester.
- Actual costs will vary between public agencies and from record to record.
- When charging for access to records maintained on computer facilities, the charges may only include the cost of the computer services and any staff time necessary to retrieve the records.
- Moneys received from copying fees are to be remitted at least monthly to the treasurer of the relevant political or taxing unit. The treasurer is then directed by KORA to credit those moneys to the agency's general fund unless "... otherwise specifically provided by law." "By law" would encompass city ordinances and county resolutions.

Who sets the fees?

Each public agency has authority to set its own fees. The governing body may wish to retain this authority itself, or at least reserve the power to approve or disapprove fees set by various agency offices. Such centralized control will likely reduce confusion and unnecessary variations in fee levels, but would still encourage each official custodian in the agency to compute the actual costs incurred in his or her office and make proposals for fee levels.

The following is a listing of the type of "actual" costs which a local government may find relevant and upon which it may want to set its access and copy fees:

- Staff Time, including labor related expenses

Determine the real cost of each unit of labor used in fulfilling a request, including salary and employee benefits costs. Labor costs attributable to record requests should probably be averaged out for the records custodians involved with the request, weighted by the time spent. Public agencies should not, of course, manipulate the cost of handling a request as a way to discourage persons from making requests.

- Equipment

If the agency is leasing equipment such as a photocopier the cost to the agency for each page it produces should be readily determinable. If the equipment is owned by the agency a more

complicated computation may be required. Cost of materials, depreciation, and maintenance are obviously actual costs incurred. Costs already set for the public agency that uses non-public equipment, such as when there is a coin-operated photocopying machine in city hall or an agreement with the local title abstract company to use its equipment when copy requests are made, should be applied to records requests.

- Overhead

The question is whether record inspection and copying costs can be accurately determined and then fairly passed on to the record requester. Some of the considerations include determining the physical size of the public facilities used for these purposes, asking whether all or only part of the overhead expenses are fairly attributable to responding to record requests, and what the use of the facility would be if not for record inspection or copying. It should be pointed out that if city A has only 10 requests for records each year and it has set aside an office for persons to use to inspect and copy records, it is grossly unfair to proportionately assess the overhead costs among 10 record requesters. In the absence of historical information as to how many requesters to divide these overhead costs among, the agency should use its best judgment in setting fees. Record access and copy fees most appropriately contain overhead charges where space, equipment, and so on has been obtained and set aside primarily or exclusively for use by the public for record inspection and copying. Where otherwise empty space and already existing machines are used, the actual overhead costs drop sharply.

- Mail Handling And Incidental Costs

Public agencies may choose to respond to requests which ask that copies or records be sent by mail to the requester. Mailing and handling costs will be incurred by the requester and may be required in advance of mailing the records.

The proverbial bottom line is that cities should track a record of the actual costs incurred and place the cost computations in writing with documentation.

Fee Policies

Checklist of policy questions each agency should address:

- (1) How should fees be computed?
 - At a minimum, the fees should fully offset the cost of the public agency for handling record requests.
 - Fees should be at a level to encourage, or at least avoid discouraging, members of the public who seek access to records.
- (2) Should fees be charged for both record access and copies, or only for access when it results in copies?
- (3) Should reduced fees, or a total waiver of fees, be allowed when record requests are made in the interest of the public-at-large?
- (4) Should government officers or employees be assessed fees for requests which are related to the performance of their official duties?

- (5) Should one public agency charge another for record requests?
- (6) Should minimum billing charges be set so that minor access or copying charges are not assessed?
- (7) Should fees be charged for access to documents which are often requested and which are made readily available to the public upon request?
- (8) Should custodians follow a procedure whereby a record requester is notified whenever the estimated or actual cost of accessing or copying a particular record exceeds a certain dollar figure?

When considering the above questions concerning fee-related policies, local officials should keep in mind that policies work best and have more legitimacy when formalized. It is therefore suggested that policies such as the above be formally adopted by ordinance, resolution or a formal manual of procedure.

Collecting and Handling Fees _____

In providing a procedure for the collection of record access and copying fees, the agency should consider the following:

- (1) Should a record request form be completed every time a fee is charged?
 - If so, should the request form serve as complete documentation of the costs incurred, charges made and fees collected, or should additional billing and receipt forms be utilized?
- (2) Should fees be collected through a central office of the agency, like the city clerk's office, or should each records custodian be authorized to accept fees?
- (3) Under what circumstances should prepayment, payment upon deliver of the record, or periodic billing be required or allowed?
 - KORA specifically authorizes prepayment of costs. See K.S.A. 45-218(f).
 - The Kansas Supreme Court held that while the public is entitled to have copies of public records, the public agency maintaining those records should not bear the cost of producing those records and a public agency may require a deposit to be made in an amount estimated to cover actual costs to be incurred. See *State v. Harden*, 230 Kan. 573 (1982).
- (4) Should payment for the fee for access to a record be demanded at the time the request is made, at the time of delivery of the requested record, or following inspection?
- (5) How are refusals to pay fees to be handled?

KORA states that record-related fees are to be remitted at least monthly to the treasurer of the political or taxing subdivision of which the public agency is a part. Such moneys are then to be credited to the general fund, except as otherwise provided by law. For security purposes, an agency may wish to set a maximum amount of cash on hand that, when reached, custodians

would remit to the treasurer. For example, any time that total fees amount to \$25, such fees would be remitted. An agency may find it convenient to keep track of fees charged and collected on record request forms. If such a purpose is envisioned for request forms, those forms should be individually numbered to assure that there is an accounting for all fees collected.

VIII. MISCELLANEOUS KORA PROVISIONS

As stated previously, all KORA exceptions will now continue in existence until July 1, 2010, unless the Legislature acts before then to the continue the exception. 2005 Kan. Sess. Laws, Ch. 126, Sec. 2. This also includes statutes throughout the Kansas Statutes Annotated that have been identified by the Revisor of Statutes as closing particular records, although not contained in the KORA. In addition, each exception will continue for a new five year period if it is newly enacted or a previously enacted exception that is substantially amended. Thus, agencies should expect that the Legislature will continue to address KORA issues on a regular basis.

Another provision requires the county or district attorney to report all KORA complaints received during the preceding year and the disposition of each complaint to the attorney general. The attorney general is then required to compile the information regarding investigations of violations and publish an abstract of the information listing the name of the public agencies subject to complaints or investigations. While the information sent to the attorney general will likely show that agencies are complying with the act, there is no duty for the attorney general to show which agencies were found not to have violated the act. Therefore, just because an agency is listed may not mean the agency did anything to violate KORA. It may merely mean someone made a complaint. Hopefully the attorney general will indicate the disposition of complaints in the required compilation of information. See 2005 Kan. Sess. Laws, Ch. 126, Sec. 5.

Chapter 4

Specific Exemptions & Explanations

K.S.A. 45-221(a) provides that unless some law other than KORA requires disclosure, the following categories of records are outside the provisions of KORA requiring mandatory disclosure.

- (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.***

Appendix B of this manual identifies those records commonly held by municipalities which are cited in statute and may have restricted access or to which access is prohibited by law.

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

Under Kansas law, consenting to disclosure of certain records relevant to the attorney-client relationship destroys that privilege for litigation purposes. See K.S.A. 60-426.

A discretionary decision to disclose a record which is covered by this exemption should be made only after consulting the attorney for the public agency.

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

This absolute exemption pertains to the records of an identifiable patient, whether living or not.

Statistical information which does not identify specific individuals is not covered by this exemption and may be disclosed. However, the requirement of K.S.A. 45-221(d) to separate or delete material which is not subject to mandatory disclosure may come into play. Records custodians should be familiar with federal laws that also impact disclosure.

- (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 or actual compensation employment contracts or employment-related contracts or agreements and lengths of service of officers and employees of public agencies once they are employed as such.***

Again, this does not exclude requests for statistical information where individual identities are not revealed, unless the number of employees is so small that the statistics would effectively reveal the identity of the employees.

This exemption generally allows the custodian to close the personnel files for past and present personnel except for these requests:

- employee and officer names;
- employee and officer positions;
- employee and officer salaries and length of service.

This exemption excludes from mandatory disclosure the following information:

- Letters of application
- Resumes
- References
- Security investigations
- Background checks

A records custodian should refuse a request for any information regarding people who have applied for a job. Note that during the 2005 legislative session new language was added to address "actual compensation" and "employment contracts." This was to address a situation resulting from the denial of actual compensation for a university employee who was paid in part by private funds. Ultimately a state district court determined that actual compensation, regardless the source, was an open record.

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

Undercover agent is defined by KORA as ". . . an employee of a public agency responsible for criminal law enforcement who is engaged in the detection or investigation of violations of criminal law in a capacity where such employee's identity or employment by the public agency is secret." K.S.A. 45-217(h)

Any person, by reporting a specific violation of law, is an "informant." "Violation of law" includes any violation of law — criminal, administrative, municipal, etc. e.g., a complainant in a public nuisance citation could probably be included in this exemption.

This exemption is probably intended to protect persons whose identities are not a matter of public interest or who would in fact have their ability to discharge their office compromised by such identification.

Records of public officials or employees who report violations of law are not covered by this exemption — for example, a code enforcement officer.

Example

A building inspector who issues a citation for improper electrical wiring would not be covered by this exemption because there is no privacy interest at stake.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual, except documents relating to the appointment of persons to fill a vacancy in an elected office.

This exemption covers the materials themselves, not the person who is the subject of the letter of reference. A custodian can refuse to disclose letters of reference and has no obligation to redact just the individually identifiable portions. The new exception, however, is for documents regarding an individual who seeks appointment to a vacancy in an elected office. Those letters of reference or recommendations, if any, would be an open record.

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

"Private persons" includes individuals as well as any non-public association, corporation, or organization. (Also note the "70-year" rule requiring disclosure)

- (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, except if the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public officer or employee.***

This exemption extends only to individuals, not to businesses or other organizations making a donation.

Example

Information as to a financial contribution by the local chamber of commerce to a city's industrial recruitment campaign could not be closed under this exemption, even if the contribution was made on the condition of anonymity.

There must be documentation showing that the donor requested anonymity for the records custodian to rely on this exemption. The additional language regarding donations intended for a specific public officer, as in the personnel exception, is intended to open records of funding sources that entities have refused to divulge in the past. Primarily this occurred with university employees in the athletic departments whose salaries or compensation are partially paid through private sources.

- (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.***

A custodian can deny access to the following under this exemption:

- an electricians' or plumbers' examination;
- the examination given to police and sheriff candidates;
- other tests given to license and permit applicants, prospective employees, or past or present employees having their proficiency measured;
- any such test that is used repeatedly.

A simple listing of individuals who passed and failed an examination is not covered under this exemption.

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

- (A) Is in the public interest;**
- (B) Would not interfere with any prospective law enforcement action, criminal investigation or prosecution;**
- (C) Would not reveal the identity of any confidential source or undercover agent;**
- (D) Would not reveal confidential investigation 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.**

If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.

K.S.A. 45-222 refers to the portion of KORA that provides for district court enforcement of the provisions of KORA.

"Criminal investigation record" is defined in KORA as ". . . records of an investigatory agency or criminal justice agency as defined by K.S.A. 22-4701 . . . and compiled in the process of preventing, detecting or investigating violations of criminal law . . ." (K.S.A. 45-217(b)).

"Criminal justice agency" is defined as "any government agency authorized by law to exercise the power of arrest, detention or prosecution, including municipal police departments, countywide law enforcement agencies, city, county or district attorneys and municipal district courts."

"Criminal investigation record" does not include:

- police blotter entries;
- court records of public proceedings;
- rosters of inmates of jails or other correctional or detention facilities; or
- records pertaining to traffic law violations except for vehicular homicide (K.S.A. 21-3405).

The custodian simply needs to determine whether a requested record meets the definition above for this exemption to apply. The final sentence of the exception, however, is new and requires a written explanation, upon request by the requester of the records, citing to the individual paragraph that would be violated if the record were to be opened.

Crime-related records custodians must also become familiar with their duties under the Criminal History Record Information Act, K.S.A. 22-4701 *et seq.* The Act deals with disclosure of non-conviction criminal history record information. Disclosure of such information is a violation of the U.S. Code as well as K.S.A. 22-4707.

- (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 of undercover agent.**

This exemption applies to both state and local governments and it covers only those records compiled while detecting or investigating violations.

This exemption is actually far-reaching and involves agencies that are plaintiffs or complainants, defendants or respondents, or the agencies responsible for adjudicating a matter. The key inquiry for custodians or FIO's is whether disclosure of investigative records will interfere with the process of adjudication, administrative or judicial. Part of the analysis may include whether an administrative or judicial proceeding is likely to occur in the future. The other consideration is whether disclosure will 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.**

This exemption applies to emergency preparedness and emergency conditions plans, the disclosure of which an agency has reason to believe would jeopardize security. It also includes blueprints and drawings, the disclosure of which would jeopardize security. For example, blueprints of the county jail, or the layout and security measures in the area dispatch center would not be subject to disclosure under this exemption.

- (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 therefore.**

The appraisals made by a public agency or by another party on behalf of a public agency in anticipation of the acquisition of property are exempted from disclosure. The term "property" includes both personal property and real property. Once the contract for acquisition of the property has been executed the exemption is removed and the appraisals are no longer exempt from mandatory disclosure unless a different exemption applies.

- (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.**

Four points are worth noting in this broadly written exemption:

- (1) The exemption is intended to respect the need for confidential communication between private citizens and public officials. This exemption respects the fact that for representative democracy to work, there must be allowed some confidences.
- (2) The exemption covers correspondence "between" the individual and the governmental entity - regardless of who initiated the correspondence.
- (3) The Legislature's choice of the word "individual" rather than "person" excludes from the exemption correspondence to or from non-individuals such as associations, corporations, organizations, etc.
- (4) The correspondence between the individuals and government which is not exempted is nearly as broadly defined as that which is exempted.

As a practical matter, much of the correspondence affected by this exemption will fall under other exemptions.

(15) *Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319 (Kansas Open Meetings Act) and amendments thereto.*

If the public agency holds records pertaining to discussions held in executive session on the subject of personnel matters of non-elected personnel, no person has the right, under this act, to access those records.

A public agency cannot make an otherwise open public record into a record protected by this exemption merely by carrying it into, or discussing it at, an executive session.

An example of the use of this exemption would be discussions of union negotiations by the governing body.

(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.*

This exemption focuses on preventing access to computer software, not computer records. This exemption is intended to prevent direct access to computer software which could result in the destruction, unlawful manipulation, alteration of information or compromise of computer systems security.

Providing the public with a description of the information maintained in electronic form limits the scope of records that can be exempted merely by being placed onto computer disks or tapes. This "description" should contain enough information to allow the average person to determine the nature of the record, but could be as broad as personal property tax database or minutes of all public meetings.

(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.*

This exemption is likely to be relevant only to public agencies, such as school boards or public colleges and universities, which offer or administer scholarship programs to students when such scholarships are based in whole or in part on financial need.

- (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.***

This exemption seems to be applicable to plans, etc., which are presented for informational purposes to a public agency.

Some evidence of transfer of ownership is implied by this exemption before plans, drawings, or specifications, used or held by a public agency are subject to disclosure. Letting the public agency see, criticize or revise the plans, etc., would not appear to be sufficient evidence of an intent to transfer ownership to defeat the utilization of this exemption. For example, many documents could be presented to the planning commission at a public hearing on a land use issue that remain the property of the developer. These would not necessarily become a part of the public agency's records.

- (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 are 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.***

Those public agencies which have engaged in oil or gas drilling on publicly owned property or that have copies of the filing will be affected by this exemption.

See K.A.R. 82-2-100 *et seq.* for the relevant administrative rules and regulations.

- (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.***

The purpose of this exemption is to ensure the free flow of information, proposals, comment, review and debate between and among policy makers and governmental staff persons.

The difficulty with this exemption is determining its scope, given its broad language. One's personal notes — prepared by and for the use of the same person — are exempted, regardless of the author [mayor/elected official, clerical employee, etc.].

What are notes?

- Notes contain opinion, proposed policies or proposed actions.
- Notes generally do not contain information in the form of final knowledge.
- If a memo or other record enunciates a policy or action, directs an employee to undertake some act, or provides information relevant to the operation of a public

agency, then this exemption is not applicable unless the record also expresses opinion or proposes policies or actions.

- A document in final form in connection with the transaction of official business is not preliminary as contemplated by this exemption.

Cited or identified does not include a request to a public agency employee that a document be prepared.

- If a city councilmember requests the city water superintendent to prepare a memorandum, the mere request and preparation of the memo does not make it subject to public disclosure.
- Such a document only becomes subject to public disclosure when it is publicly cited or identified or placed on the agenda of a public meeting after the document is prepared.

Example

Document Q was used in discussing policy decision X. Q contained staff analysis of statistical data and makes a policy proposal. Q is clearly within the definition of "notes" prior to its submission to the governing body. Suppose that no public citation of Q is ever made, and that no reference to Q ever appears on an agenda.

- Does Q suddenly become a "public record" when the governing body adopts policy X, merely because X was based on information provided in Q?
- The reasonable answer to this hypothetical is that once "notes" always "notes," *unless* the record is publicly cited or placed on an agenda, or until the 70-year rule becomes applicable.

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

- (A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or**
- (B) Distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.**

Public agencies having legislative powers are those which can enact and enforce legislation. This includes city councils and commissions, county boards of commissioners, township boards of trustees and school boards.

The scope of the exemption is limited to records which relate to proposed legislative amendments — ordinances, resolutions, and motions pertaining to such legislation.

This exemption and exemption (22) refer to a record being distributed to a majority of a quorum, which defeats the exemption.

Example

If a record which is covered by exemptions (21) or (22) is placed in the mail to members of the city council at 3 p.m. on Friday, a request for that record at 3:01 p.m. is appropriate, even though council members may not receive the mailed record until the following Monday.

- This is the "mailbox rule."

(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.**

This exemption functions in the same manner as exemption (21).

It allows members of public agencies having legislative powers to request that their staff prepare proposals, analyses, investigations, etc. and to have those materials exempt from mandatory disclosure until they are mentioned in a public setting or made available to a majority of a quorum of a membership body that can take action on the material.

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

This exemption clearly authorizes the city librarian to refuse to honor a request for the names of persons who have checked out a particular book.

This exemption would not authorize denial of a request for information on how many times a particular book had been checked out or other circulation records:

- if the library makes and keeps such records;
- if such records do not identify the names of individuals.

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

This exemption goes beyond federal census studies to include other research work which is made, maintained or possessed by the municipality relating to identifiable individuals.

Existing municipal records showing median income or unemployment rate are not intended to be exempted.

Statistical summaries or compilations present no threat to the privacy interest of individuals.

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

The records custodian should contact the agency attorney whenever a request is made for any case files, legal memoranda, depositions or other records created by or in the possession of any attorney working on behalf of the agency.

While a liberal construction of KORA would not justify exemption of every document produced or reviewed by the attorney, the attorney himself or herself is unquestionably the best person to determine whether a particular record falls within the scope of this exemption.

(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.

This exemption applies only for individually identifiable residential customers. This exemption has long been the source of confusion, but LKM has not been successful in getting clarifying language.

This exemption prevents persons from making commercial use of customer utility records by developing mailing lists from such records.

A request for statistical information, a request for records of identifiable non-residential customers, and a request for billing records for individually identified residential customers do not fall under the scope of this exemption. In other words, if a citizen asks to see a specific individual's utility bill, the municipality should disclose the document. The municipality does not have to provide a list of all utility customers, however.

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

At least two reasons exist for this exemption:

- (1) It prevents unnecessary pressure on public officials to modify bid specifications. During the process of developing bid specifications, individuals who seek to influence the development of those specifications in their favor often place pressure on involved public officials.
- (2) The bid process is intended to provide equal opportunity to all potential bidders. An obvious advantage is gained by a bidder who has access to bid specifications prior to the time his or her competitors do. Advantages could include more time to prepare proposals, buying supplies of scarce materials or even negotiating with competitors to place them in a non-competitive situation.

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

"Related documents" is limited to any documents relating to the bid itself and which supplement a sealed bid. This could include bonding materials.

Such documents probably need not be physically placed under seal with the bid, but should both bear a relationship to the bid and be of a nature that disclosure of the documents to a competing bidder would be detrimental to the originator.

- (29) ***Correctional records pertaining to a identifiable inmate or release, except that:***
- (A) ***The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;***
 - (B) ***The ombudsman of corrections, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;***
 - (C) ***The information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 et seq. and amendments thereto, shall not be disclosed; and***
 - (D) ***Records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.***

Counties and state agencies having access to correctional records of inmates, should inventory such records and develop policies for responding to records requests for information. One commonly requested piece of information by the media is mug shots, which are routinely taken by a facility when an individual is arrested. Mug shots, under this subsection are open records.

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

"Clearly unwarranted invasion of personal privacy" is now defined in K.S.A. 45-217(b) 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." Custodians should use a balancing test to determine whether privacy interests outweigh the public interest, and vice versa. Note that both elements must be present to use this exemption. The information must be highly offense AND not of legitimate concern to the public. Therefore, if information is great public concern, it will not matter that it is highly offensive. Remember, that it is the agency that must balance the interest, not the individual affected. For example, employees might believe that

releasing their salaries is an invasion of privacy, but KORA clearly makes salaries of public officials open records. Some relevant questions to consider are:

- Does the harm in granting public inspection outweigh the benefit that arises from disclosure?
- What is the nature of the harm? Who suffers it?
- What is the nature of the benefit? Who enjoys it?

No right to recover damages for a privacy violation exists within KORA. A lawsuit seeking financial damages will probably be brought under Section 1983 of the federal Civil Rights Act of 1991 (42 U.S.C. 1983). A lawsuit under this law alleges that a federally-protected right (the right to privacy) has been violated by a person acting under authority of law. In such a lawsuit, both the records custodian and the municipality may find themselves liable to the plaintiff for damages. This is why it is important to have the agency attorney handle requests where privacy might be an issue.

Some courts have held that a privacy exemption to disclosure does not extend to records of deceased persons, meaning that the privacy exemption may die with the person identified in the record. While this is true for some records, it may be not true with all. For example the medical records exemption includes records applicable to deceased individuals.

- (31) Public records pertaining to a 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.**

This exemption is to foster economic development in an increasingly competitive environment.

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

Exemption (32) is included to prevent unfair competitive practices concerning bids or estimates submitted for public construction or improvements. An example of exempt information under this subsection includes engineering estimates for the construction of a road or bridge project.

The bids or estimates are not subject to KORA until the bidding process is complete and the governing body has made a decision.

- (33) Financial information submitted by contractors in qualification statements to any public agency.**

Qualification statements provide financial and other information regarding contractors which may be used by a public agency in determining the eligibility of a particular company to be awarded a contract. Disclosure of such materials, particularly to competitors of the contractor or bidder, could be harmful to that party, and would serve no valid public interest.

- (34) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711 and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.
- (35) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923, or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.
- K.S.A. 65-4922 et seq. requires that medical care facilities establish an internal risk management program. This requires documentation of health care providers' conduct that is considered below the applicable standard of care level and has a reasonable probability of causing injury to a patient or grounds for disciplinary action by the appropriate licensing agency.
- (36) Information which would reveal the precise location of an archeological site.
- In an effort to prevent the destruction and looting of important archeological finds, information that would divulge the location of the archeological site is exempt under KORA.
- (37) 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.
- (38) Risk-based capital reports, risk-based capital plans and corrective orders including working orders and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 40-2c20 and K.S.A. 40-2d20, and amendments thereto.
- (39) Memoranda and related materials required to be used to support the annual actuarial opinions submitted pursuant to subsection (b) of K.S.A. 40-409, and amendments thereto.
- (40) Disclosure reports filed with the commissioner of insurance under subsection (a) of K.S.A. 40-2,156, and amendments thereto.
- (41) 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.
- (42) Any records the disclosure of which is restricted or prohibited by a tribal-state gaming compact.
- (43) 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.

(44) The amount of franchise tax paid to the secretary of state by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, domestic limited partnership, foreign limited partnership, domestic limited liability partnerships and foreign limited liability partnerships.

(45) Records, other than criminal investigation records, the disclosure of which would pose a substantial likelihood of revealing security measures that protect:: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; or (C) private property or persons, if the records are submitted to the agency. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments.

This exception is primarily intended to protect public utilities from the threat of terrorism. It would also apply, pursuant to (C), to private entities who share security information with governmental entities for the purpose of security, such as evacuation plans or emergency response information.

(46) Any information or material received by the register of deeds of a county from military discharge papers (DD Form 214). Such papers shall be disclosed: To the military dischargee; to such dischargee's immediate family members and lineal descendants; to such dischargee's heirs, agents or assigns; to the licensed funeral director who has custody of the body of the deceased dischargee; when required by a department or agency of the federal or state government or a political subdivision thereof; when the form is required to perfect the claim of military service or honorable discharge or a claim of a dependent of the dischargee; and upon the written approval of the commissioner of veterans affairs, to a person conducting research.

Because these papers often contain other information about the individual, such as the reasons for the discharge, the Legislature decided to make this its own exception rather than having records custodians rely upon other exceptions. This was deemed to be a cleaner way to protect private information that may or may not fall under other protections.

(47) Information that would reveal the location of a shelter or a safehouse or similar place where persons are provided protection from abuse.

Appendix A

Full Text of the Kansas Open Records Act

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

History: L. 1984, ch. 187, § 1; Feb. 9.

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.

History: L. 1984, ch. 187, § 2; Feb. 9.

2005 Kan. Sess. Laws, Ch. 126, Sec. 7. K.S.A. 45-217 is hereby amended to read as follows:
45-217. As used in the open records act, unless the context otherwise requires:

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

(b) "*Clearly unwarranted invasion of personal privacy*" means 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.

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

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

(e) "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.

(f) (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.

(h) "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 K.S.A. 45-220, any person may inspect public records during the regular office hours of the public agency and during any additional hours established by the public agency pursuant to K.S.A. 45-220.

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

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

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

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

History: L. 1984, ch. 187, § 4; Feb. 9.

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 K.S.A. 46-1207a and amendments thereto.

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

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

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

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

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

History: L. 1984, ch. 187, § 5; L. 1984, ch. 282; § 2; L. 1994, ch. 100, § 1; L. 1995, ch. 135, § 1; July 1.

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 K.S.A. 45-221 or K.S.A. 2004 Supp. 45-230, 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).

History: L. 1984, ch. 187, § 6; L. 1984, ch. 282, §3; L. 2003, ch. 126, § 2; July 1.

2005 Kan. Sess. Laws, Ch. 126, Sec. 1. K.S.A. 2004 Supp. 45-221 is hereby amended to read as follows: 45-221. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

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

- (2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.
- (3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.
- (4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries or *actual compensation employment contracts or employment-related contracts or agreements* 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, *except documents relating to the appointment of persons to fill a vacancy in an elected office.*
- (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, *except if the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public officer or employee.*
- (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 as provided herein.* The district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:
- (A) Is in the public interest;
 - (B) would not interfere with any prospective law enforcement action, *criminal investigation or prosecution;*
 - (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. *If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.*
- (11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.
- (12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.
- (13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a

releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;

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

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

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

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

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

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

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

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

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

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

(37) 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.

(38) Risk-based capital reports, risk-based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 40-2c20 and 40-2d20 and amendments thereto.

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

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

(41) 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.

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

(43) 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.

(44) The amount of franchise tax paid to the secretary of revenue or the secretary of state by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, domestic limited partnership, foreign limited partnership, domestic limited liability partnerships and foreign limited liability partnerships.

(45) Records, *other than criminal investigation records*, the disclosure of which would pose a substantial likelihood of revealing security measures that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; or (B) *transportation and sewer or wastewater treatment systems, facilities or equipment; or (C) private property or persons, if the records are submitted to the agency.* For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. *Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments.*

(46) *Any information or material received by the register of deeds of a county from military discharge papers (DD Form 214). Such papers shall be disclosed: To the military dischargee; to such dischargee's immediate family members and lineal descendants; to such dischargee's heirs, agents or assigns; to the licensed funeral director who has custody of the body of the deceased dischargee; when required by a department or agency of the federal or state government or a political subdivision thereof; when the form is required to perfect the claim of military service or honorable discharge or a claim of a dependent of the dischargee; and upon the written approval of the commissioner of veterans affairs, to a person conducting research.*

(47) *Information that would reveal the location of a shelter or a safehouse or similar place where persons are provided protection from abuse.*

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

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

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

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

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

(g) *Any confidential records or information relating to security measures provided or received under the provisions of subsection (a)(45) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.*

45-222. Civil remedies to enforce act; attorney fees. (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 shall award costs and a reasonable sum as an attorney's fee for services rendered in such action, including proceedings on appeal, to be recovered and collected as part of the costs 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 shall award to the defendant costs and a reasonable sum as an attorney's fee for services rendered in such action, including proceedings on appeal, to be recovered and collected as part of the costs 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.

(f) The provisions of subsections (c) and (d) concerning the awarding of costs and attorney fees for services rendered during an appeal shall apply only to actions which are based on causes of action accruing on or after July 1, 2004.

History: L. 1984, ch. 187, § 8; L. 1984, ch. 282, § 6; L. 1990, ch. 190, § 1; L. 2000, ch. 156, § 4; L. 2004, ch. 151, § 2; July 1.

45-223. Civil penalties for violations. (a) Any public agency subject to this act that knowingly violates any of the provisions of this act or that intentionally fails to furnish information as required by this act shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney, in a sum set by the court of not to exceed \$500 for each violation.

(b) Any civil penalty sued for and recovered hereunder by the attorney general shall be paid into the state general fund. Any civil penalty sued for and recovered hereunder by a county or district attorney shall be paid into the general fund of the county in which the proceedings were instigated.

History: L. 1984, ch. 187, § 9; L. 2000, ch. 156, § 5; July 1.

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.

History: L. 1984, ch. 187, § 16; Feb. 9.

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.

History: L. 1984, ch. 187, § 13; Feb. 9.

45-226. Local freedom of information officer. (a) The governing body of every public agency in Kansas which maintains public records shall designate a local freedom of information officer. (b) The local freedom of information officer or the local freedom of information officer's designee shall:

(1) Prepare and provide educational materials and information concerning the open records act;
(2) be available to assist the public agency and members of the general public to resolve disputes relating to the open records act;

(3) respond to inquiries relating to the open records act;

(4) establish the requirements for the content, size, shape and other physical characteristics of a brochure required to be displayed or distributed or otherwise make available to the public under the open records act. In establishing such requirements for the content of the brochure, the local freedom of information officer shall include plainly written basic information about the rights of a requestor, the responsibilities of a public agency, and the procedures for inspecting and obtaining a copy of public records under the open records act.

(c) This section shall be a part of and supplemental to the Kansas open records act.

History: L. 2000, ch. 156, § 1; July 1.

45-227. Brochure concerning public records. (a) An official custodian shall prominently display or distribute or otherwise make available to the public a brochure in the form prescribed by the local freedom of information officer that contains basic information about the rights of a requestor, the responsibilities of a public agency, and the procedures for inspecting or obtaining a copy of public records under the open records act. The official custodian shall display or distribute or otherwise make available to the public the brochure at one or more places in the administrative offices of the governmental body where it is available to members of the public who request public information in person under this act.

(b) This section shall be a part of and supplemental to the Kansas open records act.

History: L. 2000, ch. 156, § 2; July 1.

45-228. Investigation of alleged violations; powers. In investigating alleged violations of the Kansas open records act, the attorney general or county or district attorney may:

(a) Subpoena witnesses, evidence, documents or other material;

(b) take testimony under oath;

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

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

(e) serve interrogatories.

History: L. 2000, ch. 156, § 6; July 1.

2005 Kan. Sess. Laws, Ch. 126, Sec. 2. K.S.A. 45-229 is hereby amended to read as follows: 45-229.

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

- (1) The public record is of a sensitive or personal nature concerning individuals;
- (2) the public record is necessary for the effective and efficient administration of a governmental program; or
- (3) the public record affects confidential information. The maintenance or creation of an exception to disclosure must be compelled as measured by these criteria. Further, the legislature finds that the public has a right to have access to public records unless the criteria in this section for restricting such access to a public record are met and the criteria are considered during legislative review in connection with the particular exception to disclosure to be significant enough to override the strong public policy of open government. To strengthen the policy of open government, the legislature shall consider the criteria in this section before enacting an exception to disclosure.

(b) *Subject to the provisions of subsection (h), all exceptions to disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and any new exception to disclosure or substantial amendment of an existing exception shall expire on July 1 of the fifth year after enactment of the new exception or substantial amendment, unless the legislature acts to continue the exception. A law that enacts a new exception or substantially amends an existing exception shall state that the exception expires at the end of five years and that the exception shall be reviewed by the legislature before the scheduled date.*

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

(d) This section is not intended to repeal an exception that has been amended following legislative review before the scheduled repeal of the exception if the exception is not substantially amended as a result of the review.

(e) In the year before the expiration of an exception, the revisor of statutes shall certify to the president of the senate and the speaker of the house of representatives, by July 15, the language and statutory citation of each exception which will expire in the following year which meets the criteria of an exception as defined in this section. Any exception that is not identified and certified to the president of the senate and the speaker of the house of representatives is not subject to legislative review and shall not expire. If the revisor of statutes fails to certify an exception that the revisor subsequently determines should have been certified, the revisor shall include the exception in the following year's certification after that determination.

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

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

- (1) Is required by federal law;
- (2) applies solely to the legislature or to the state court system.

(h) (1) The legislature shall review the exception before its scheduled expiration and consider as part of the review process the following:

- (A) What specific records are affected by the exception;
- (B) whom does the exception uniquely affect, as opposed to the general public;
- (C) what is the identifiable public purpose or goal of the exception;
- (D) whether the information contained in the records may be obtained readily by alternative means and how it may be obtained;

(2) An exception may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exception and if the exception:

(A) Allows the effective and efficient administration of a governmental program, which administration would be significantly impaired without the exception;

(B) protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. Only information that would identify the individuals may be excepted under this paragraph; or

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

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

(i) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) of this section on June 1, 2004, are hereby continued in existence until July 1, 2010, at which time such exceptions shall expire: 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 11-306, 12-189, 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16a-2-304, 17-1312e, 17-2227, 17-5832, 17-7503, 17-7505, 17-7511, 17-7514, 17-76,139, 19-4321, 21-2511, 22-3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312, 25-4161, 25-4165, 31-405, 34-251, 38-1508, 38_1520, 38-1565, 38-1609, 38-1610, 38-1618, 38-1664, 39-709b, 39-719e, 39-934, 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21, 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b, 40-3421, 40-3613, 40-3805, 40-4205, 44-510j, 44-550b, 44-594, 44-635, 44-714, 44-817, 44-1005, 44-1019, 45-221, 46-256, 46-259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406, 49-427, 55-1,102, 56-1a606, 56-1a607, 56a-1201, 56a-1202, 58-4114, 59-2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-3335, 60-3336, 65-102b, 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-1,113, 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-1135, 65-1467, 65-1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-2839a, 65-2898a, 65-3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4608, 65-4922, 65-4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-67a05, 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203, 66-1220a, 66-2010, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-5427, 72-8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909, 74-50,131, 74-5515, 74-7308, 74-7338, 74-7405a, 74-8104, 74-8307, 74-8705, 74-8804, 74-9805, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362, 75-5133, 75-5266, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493, 76-12b11, 76-3305, 79-1119, 79-1437f, 79-15,118, 79-3234, 79-3395, 79-3420, 79-3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.

45-230. Unlawful use of names derived from public records. (a) 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 except:

(1) Lists of names and addresses from public records of the division of vehicles obtained under K.S.A. 74-2012, and amendments thereto;

(2) lists of names and addresses of persons licensed, registered or issued certificates or permits to practice a profession or vocation may be sold or given to, and received by, an organization of persons who practice that profession or vocation for membership, informational or other purposes related to the practice of the profession or vocation;

(3) lists of names and addresses of persons applying for examination for licenses, registrations, certificates or permits to practice a profession or vocation shall be sold or given to, and received by, organizations providing professional or vocational educational materials or courses to such persons for the sole purpose of providing such persons with information relating to the availability of such materials or courses;

(4) lists of names, addresses and other information from voter registration lists may be compiled, used, given, received, sold or purchased by any person, as defined in K.S.A. 21-3110 and amendments thereto, solely for political campaign or election purposes;

(5) lists of names and addresses from the public records of postsecondary institutions as defined in K.S.A. 74-3201b, and amendments thereto, may be given to, and received and disseminated by such institution's separately incorporated affiliates and supporting organizations, which qualify under section 501(c)(3) of the federal internal revenue code of 1986, for use in the furtherance of the purposes and programs of such institutions and such affiliates and supporting organizations; and

(6) to the extent otherwise authorized by law.

(b) Any person subject to this section who knowingly violates the provisions of this section 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 not to exceed \$500 for each violation.

(c) The provisions of this section shall not apply to nor impose any civil liability or penalty upon any public official, public agency or records custodian for granting access to or providing copies of public records or information containing names and addresses, in good faith compliance with the Kansas open records act, to a person who has made a written request for access to such information and has executed a written certification pursuant to subsection (c)(2) of K.S.A. 45-220, and amendments thereto.

(d) This section shall be a part of and supplemental to the Kansas open records act.

History: L. 2003, ch. 126, § 1; July 1.

45-250. Sunflower Foundation: Health Care for Kansas; subject to open records law. The Sunflower Foundation: Health Care for Kansas, established pursuant to the settlement agreement entered into by the attorney general in the action filed by Blue Cross and Blue Shield of Kansas, Inc., in the district court of Shawnee county, Kansas, case no. 97CV608, shall be and is hereby deemed to be a public agency and shall be subject to the open records law.

History: L. 2001, ch. 122, § 2; April 26.

2005 Kan. Sess. Laws, Ch. 126, New Sec. 5. (a) On or before January 15, of each year, the county or district attorney of each county shall report to the attorney general all complaints received during the preceding fiscal year concerning violations of the open records act and open meetings act and the disposition of each complaint.

(b) The attorney general shall compile information received pursuant to subsection (a) with information relating to investigations of violations of the open records act and the open meetings act conducted by the office of the attorney general. The attorney general shall publish a yearly abstract of such information listing by name the public agencies which are the subject of such complaints or investigations.

Appendix B

Inventory of Public Records

This inventory is included for the benefit of public officials as a resource after studying the analysis of the Kansas Open Records Act (KORA) provided in this manual. It should not be utilized independent of the discussion of KORA, as no simple record inventory can include all of the possible factors which may be relevant to a particular record. The way to use this inventory is to find the type of record at issue. Next to each record, there may be a citation to a KORA provision or to a Kansas statute. Some will have citations to both, some to only one and some to neither. Those citations simply indicate where to look to help determine whether or not the record is subject to disclosure. **The presence or absence of a citation does not mean definitively that the record is open or is not open.** In some cases the cited statute merely addresses that type of record, but does not speak to disclosure. Depending on the content of the record in question, an unlisted KORA provision or Kansas statute may apply. There are far too many variables to create a definitive list, but if used properly this list should provide some guidance.

Users are also advised that this inventory is not intended to be all-inclusive, nor does it attempt to designate records by anything other than generic titles.

Records which are listed in this chapter and are not affected by the noted applicable state law or any other law should be considered open records and are subject to public disclosure when requested, unless the records custodian can identify an exemption arising from the unique circumstances of the record (e.g. a privacy issue) or the request (e.g. it creates an unreasonable burden upon the public agency).

Public Record	KORA Provision	K.S.A. Provision
Abstracts	none	n/a
Accident Reports, Employees	none	n/a
Accident Reports, Motor Vehicles	none	n/a
Accident Reports, Public Vehicles	none	n/a
Accounting Reports	none	n/a
Accounts Payable	none	n/a
Accounts Receivable	none	n/a
Accounts Receivable Register	none	n/a
Activities Ledger	none	n/a
Activity Log, Periodic	none	n/a
Administrative Policies	none	n/a
Advisory Body Minutes	none	n/a
Affidavits	none	n/a
Affidavits of Equitable Interest	none	n/a
Affidavits of Identity	none	n/a
Affidavits of Publication	none	n/a
Affirmative Action Plan	none	n/a
Affirmative Action Reports	none	n/a
Agenda Material, Public Meetings	none	n/a
Agendas, Public Meetings	none	n/a
Agents, Appointment of	none	n/a
Airport Authority Board Minutes	none	n/a
Airport Lease Agreements	none	n/a
Airport Monthly Rentals Register	none	n/a
Airport Development & Operation Plans	45-221(a)(12),(13),(18),(20),(32)	n/a
Airport Security Reports	45-221(a)(12)	n/a
Alcohol Breathalyzer Records	45-221(a)(10)	n/a
Alcohol Treatment Records	45-221(a)(3)	59-29b79
Alley Maps	none	n/a
Alley Vacations	none	n/a
Ambulance Billings	45-221(a)(3),(30)	n/a
Ambulance Billings, Delinquencies	45-221(a)(3),(30)	n/a
Ambulance Calls, Illness or Injury	45-221(a)(3),(30)	n/a
Ambulance Calls, Time and Place	45-221(a)(3),(26),(30)	n/a
Animal Impoundment Records	none	n/a
Animal Impoundments, Charges	none	n/a
Annexation Agreements	none	n/a
Annexation, Plans and Studies	45-221(a)(20)	n/a

Public Record	KORA Provision	K.S.A. Provision
Annexation, Petitions	none	n/a
Annexation, Resolution to Annex	none	n/a
Applications for Surveys	none	n/a
Appointment Calendars	45-221(a)(30)	n/a
Appointments to Offices	none	n/a
Appraisal Records for Taxation		
Purposes	none	n/a
Appraisers' Reports	45-221(a)(13),(32)	n/a
Appropriation Ordinances	none	n/a
Architectural Estimates for		
Public Improvements	45-221(a)(13),(18),(32)	n/a
Architectural Plans for		
Public Improvements	45-221(a)(12),(13),(18), (32)	n/a
Archives, Index to Holdings	none	n/a
Arrest Cards	none	12-4516; 59-2979; 22-4701
Arrest Jackets	none	22-4701
Arrest Records	45-221(a)(1)	12-4516; 59-2979; 22-4701
Arrest Warrants	45-221(a)(1)	21-3827; 22-4701
Arrests - Summary Reports	45-221(a)(1)	12-4516; 59-2979; 22-4701
Arson Investigation Notes	45-221(a)(5),(10),(11),(20)	n/a
Arson Investigation Reports	45-221(a)(5),(10),(11),(25)	n/a
Assessment Records, Personalty	none	n/a
Assessment Records, Realty	none	n/a
Attendance Records	none	n/a
Audit Reports	none	n/a
Bacteriological Analysis	45-221(a)(3)	n/a
Bad Debt Records	none	n/a
Ballots	45-221(a)(1)	25-2422; 25-2708
Bank Reconciliations	none	n/a
Bank Statements	none	n/a
Bankruptcy Claims	none	n/a
Bench Warrants	45-221(a)(1)	21-3827; 22-4701
Benefit District Petitions	none	n/a
Benefit District Reports	45-221(a)(20),(21),(22)	n/a
Benefit District Studies	45-221(a)(20),(21),(22)	n/a
Bicycle Registrations, Reports	none	n/a
Bid Bonds	none	n/a
Bid Tabulations	45-221(a)(28)	n/a

Public Record**KORA Provision****K.S.A. Provision**

Bidder's Qualification Statements &		
Financial Information	45-221(a)(33)	n/a
Bidding Information	45-221(a)(27)	n/a
Bidding Notices	none	n/a
Bids Accepted	none	n/a
Bids Received, Opened	45-221(a)(28)	n/a
Bids Received but Unopened	45-221(a)(1),(28)	3-143;144(j)
Bids Rejected	none	n/a
Bid Specifications	45-221(a)(27)	n/a
Billboard Applications	none	n/a
Bingo Game Investigations	45-221(a)(5),(10)	n/a
Bingo Records, Reports	none	n/a
Birth Certificates Recorded	45-221(a)(1)	65-2411
Birth Registers	45-221(a)(1)	65-2411
Blood Tests	45-221(a)(1),(3)	65-118:119;65-153f
Board of Electrical Examiners Minutes ...	none	n/a
Board of Health Minutes	none	n/a
Board of Plumbing Appeals Minutes	none	n/a
Board of Zoning Appeals -		
Conditional Use Permits	none	n/a
Board of Zoning Appeals Minutes	none	n/a
Board of Zoning Appeals Resolutions		
and Bylaws	none	n/a
Board of Zoning Appeals - Variances	none	n/a
Bond and Note Transcripts	none	n/a
Bond Prospectus	none	n/a
Bond Records	none	n/a
Bond Register	none	n/a
Bond Sales, Official Statements	none	n/a
Bonds and Coupons, Canceled	none	n/a
Bonds and Coupons, Registers	none	n/a
Bonds and Coupons, Unredeemed	none	n/a
Bonds, Coupons Paid	none	n/a
Bonds, Housing Mortgage Revenue		
Bond Transcripts	none	n/a
Bonds, Industrial Revenue Bond		
(IRB) Application Investigations	none	n/a
Bonds, IRB Letters of Intent	none	n/a

Public Record	KORA Provision	K.S.A. Provision
Bonds, IRB Transcripts	none	n/a
Bonds, Registered Owners	none	n/a
Bondsmen Reports	none	n/a
Bridge Appraisals	45-221(a)(13),(32)	n/a
Bridge Inspections	none	n/a
Bridge Inventories	none	n/a
Bridge Maintenance Reports	none	n/a
Bridge Safety Studies	45-221(a)(18),(20)	n/a
Budget, Adopted	none	n/a
Budget, Annual	none	n/a
Budget, Fund Balances	none	n/a
Budget, Hearing Notice	none	n/a
Budget, Memos and Work papers	45-221(a)(20),(21),(22)	n/a
Budget, Proposed	45-221(a)(20),(21),(22)	n/a
Budget, Status Reports	none	n/a
Budget, Work sheets	45-221(a)(20)	n/a
Building Appeals Board Minutes	none	n/a
Building Permit Applications	none	n/a
Building Construction Contracts	none	n/a
Building Demolition Permits	none	n/a
Building Inspection Reports	none	n/a
Building Permits	none	n/a
Building Permit Monthly Reports	none	n/a
Building Permit Reports to U.S. Census Bureau	none	n/a
Burial Records	none	n/a
Burial - Removal Permits	none	n/a
Burning Permit Applications	none	n/a
Cancelled Checks	none	n/a
Candidate Filings	none	n/a
Candidate Nomination Petitions	none	n/a
Candidate Receipt/Expenditure Filings	none	n/a
Candidate Statements of Substantial Interests	none	n/a
Capital Improvement Plans	none	n/a
Cash Balance Registers	none	n/a
Cash Journal, Register	none	n/a
Cash Posting Registers	none	n/a

Public Record	KORA Provision	K.S.A. Provision
Cash Receipts Records	none	n/a
Cash Receipts Statements, Periodic	none	n/a
Cemetery, Bank Statements	none	n/a
Cemetery Board Minutes	none	n/a
Cemetery Burial Records	none	n/a
Cemetery Deeds	none	n/a
Cemetery Lot Owners Endowment		
Fund Register	none	n/a
Cemetery Lot Owners Register	none	n/a
Cemetery Lot Payment Records	none	n/a
Cemetery Lot Purchase Agreements	none	n/a
Cemetery Lot Transfer Agreements	none	n/a
Cemetery Maps and Plans	none	n/a
Cemetery Ownership Certificates	none	n/a
Cemetery Perpetual Care Bonds	none	n/a
Cemetery Perpetual Care Certificate		
Stubs	none	n/a
Cemetery Perpetual Care List	none	n/a
Cemetery Receipt and Disbursement		
Ledgers	none	n/a
Cemetery Receipts	none	n/a
Cemetery Statements of Account	none	n/a
Census Reports and Studies	45-221(a)(24)	n/a
Cereal Malt Beverage License	45-221(a)(3),	
Applications	(6),(10),(29)	n/a
Cereal Malt Beverage Licenses, Forms ..	none	n/a
Cereal Malt Beverage Licenses,		
Investigations	45-221(a)(6), (10), (11),(20), (29), (30)	n/a
Cereal Malt Beverage Licenses,		
Issuances	none	n/a
CETA, Contracts	none	n/a
CETA, Personnel	45-221(a)(4)	n/a
Charter Ordinances	none	n/a
Check Register	none	n/a
Check Stubs	none	n/a
Checks, Canceled	none	n/a
Checks, List of Outstanding Checks	none	n/a
Checking Account Statements	none	n/a

Public Record	KORA Provision	K.S.A. Provision
Child Abuse, Neglect Reports	45-221(a)(1),(3),(5),(10),(11)	38-1507
City Attorney, Case Files	45-221(a)(25)	n/a
City Attorney, Memos and Letters	45-221(a)(25)	n/a
City Attorney Opinions	45-221(a)(25)	n/a
Civil Rights Complaints	45-221(a)(11)	n/a
Civil Rights Investigations	45-221(a)(11),(20)	n/a
Civil Service Test Scores	45-221(a)(4),(9)	n/a
Claims, Payable	none	n/a
Claims, Received	none	n/a
Clothing Allowance Record	none	n/a
Collision Diagrams (Police)	none	n/a
Committee Agendas	none	n/a
Committee Minutes	none	n/a
Committee Reports	none	n/a
Community Development Block Grants, Applications	45-221(a)(20)	n/a
Community Development Block Grants, Client Rehabilitation Records	none	n/a
Community Development Block Grants, Finance Records	none	n/a
Community Development Block Grants, Payment Vouchers	none	n/a
Community Development Block Grants, Regulations	none	n/a
Community Action Council Minutes	none	n/a
Community Services Directory	none	n/a
Complaint Disposition Records	none	22-4701
Complaint Investigations	45-221(a)(1),(5),(10),(11)	22-4701
Complaints, Received	45-221(a)(5),(10),(11)	22-4701
Comprehensive Plans	none	n/a
Comprehensive Plans, Amendments	none	n/a
Computer Disks	(Depends on Information Recorded)	
Computer Disks, Index of	none	n/a
Computer Records	(Depends on Information Recorded)	
Computer Software (Programs)	45-221(a)(12),(16)	n/a
Concrete Inspection Log	none	n/a
Construction Project Plans & Drawings	45-221(a)(12),(13),(18),(20)	n/a
Construction Project Specifications	45-221(a)(27)	n/a

Public Record	KORA Provision	K.S.A. Provision
Contractors' Qualification Statements & Financial Information	45-221(a)(33)	n/a
Contracts	none	n/a
Contracts, Proposed	45-221(a)(20)	n/a
Coroner's Autopsy Reports	none	n/a
Coroner's Report of Death	none	n/a
Corporation Certificates	none	n/a
Correctional Facility Commitment Order	none	22-4701
Correspondence	45-221(a)(14),(30)	n/a
Correspondence Providing Notice of Official Action	none	n/a
Court, Appearance Bonds	none	n/a
Court Decisions	none	n/a
Court Dockets	none	n/a
Court Pre-Sentence Investigations	45-221(a)(1),(3),(10)	22-4701; 59-2979; 59-29b79
Court Transcripts	none	n/a
Court Warrants	45-221(a)(1)	21-3827
Covenants	none	n/a
Credit Union Payroll Deduction Cards	45-221(a)(4),(30)	n/a
Criminal Histories or Case Records	none	22-4701 et seq.
Damage Estimates	45-221(a)(20)	n/a
Death Certificates	45-221(a)(4),(30)	n/a
Death Registers	none	n/a
Dedications of Property	none	n/a
Deeds and Abstracts	none	n/a
Delinquent Tax Records, Intangibles	45-221(a)(1)	12-1,108
Delinquent Tax Records, Personalty	none	n/a
Delinquent Tax Records, Realty	none	n/a
Demolition Permits	none	n/a
Deposits, Receipts	none	n/a
Deposits, Records	none	n/a
Designation of Public Depository	none	n/a
Developer Proposals	45-217(f),(2);45-221(a)(14),(18),(31)	n/a
Disbursement Records	none	n/a
Disinterment Permits	none	n/a
Dispatcher Records, Ambulance	none	n/a
Dispatcher Records, Fire	none	n/a

Public Record	KORA Provision	K.S.A. Provision
Dispatcher Records, Police	none	n/a
Dog Tag Receipts	none	n/a
Dog Tag Register	none	n/a
Downtown Improvement Project Plans	45-221(a)(18),(20),(21),(22)	n/a
Drivers' License Revocations Register	none	n/a
Drug Dependence Treatment Records	45-221(a)(1),(3)	59-2979
Easements	none	n/a
Education, Out-District Tuition Records	none	n/a
Election Expense Reports	none	n/a
Elections, Absentee Voters Lists	none	25-3008
Elections, Party Affiliation Records	none	25-3008
Election Results	none	n/a
Electrical Examinations	45-221(a)(9)	n/a
Electrical Inspections	none	n/a
Electrical Permits	none	n/a
Electricians, Certificates or Licenses	none	n/a
Elevator Inspection Reports	none	n/a
Email	(Depends on Information Recorded)	
Emergency Disaster Preparedness Plans	45-221(a)(12)	n/a
Eminent Domain, Records of		
Proceedings	none	n/a
Employee Classification Plans	none	n/a
Employee Deferred Compensation		
Records	45-221(a)(4)	n/a
Employee Fingerprint Cards	45-221(a)(4)	n/a
Employee Grievances	45-221(a)(4)	n/a
Employee Grievances, Dispositions	45-221(a)(4)	n/a
Employee Grievances, Investigations	45-221(a)(4)	n/a
Employee Handbooks	none	n/a
Employee Health, Sick Leave Records	45-221(a)(3),(4)	n/a
Employee Hospitalization Records	45-221(a)(3),(4)	n/a
Employee Income Tax Withholding		
Records	45-221(a)(4)	n/a
Employee Insurance Applications	45-221(a)(4)	n/a
Employee Insurance Enrollment Cards	45-221(a)(4)	n/a
Employee Leave Records	45-221(a)(4)	n/a
Employee Names and Addresses	none	n/a
Employee Pay Plans	none	n/a

Public Record	KORA Provision	K.S.A. Provision
Employee Positions	none	n/a
Employee Salaries	none	n/a
Employee Safety Programs	none	n/a
Employee Termination Records	45-221(a)(4)	n/a
Employee Time Sheets	45-221(a)(4)	n/a
Employee Organization Agreements	none	n/a
Employee Organization Negotiations	45-221(a)(15)	n/a
Employment Agreements	45-221(a)(4),(15)	n/a
Employment Applications	45-221(a)(4)	n/a
Employment Application Forms	none	n/a
Employment Interview Forms	none	n/a
Employment Tax Liens	45-221(a)(4)	n/a
Employment Tax Liens, Release of	45-221(a)(4)	n/a
Energy Audit Reports	none	n/a
Engineer's Certificates	none	n/a
Engineering Drawings	45-221(a)(18),(20),(22),(32)	n/a
Engineering Estimates for Public		
Improvements	45-221(a)(13),(18),(20),(32)	n/a
Engineering Maps	45-221(a)(13),(18),(20)	n/a
Engineering Plans for Public		
Improvements	45-221(a)(13),(18),(20)	n/a
Engineering Specifications	45-221(a)(13),(18),(20),(22),(32)	n/a
Engineering Studies	45-221(a)(13),(18),(20)	n/a
Engineering Test Reports	45-221(a)(13),(18),(20)	n/a
Environmental Impact Studies	45-221(a)(20)	n/a
Environmental Protection Reports	none	n/a
Equipment Maintenance Histories	none	n/a
Equipment Manuals	none	n/a
Equipment Operating Cost Records	none	n/a
Equipment Warranties	none	n/a
Estimates of Project Costs	45-221(a)(13),(20),(32)	n/a
Estoppel Agreements	none	n/a
Excavation Permits	none	n/a
Expenditure Analyses	45-221(a)(20)	n/a
Expenditure Registers	none	n/a
Expense Summary Ledger	none	n/a
Facsimile Signatures	none	n/a
Feasibility Reports, Studies	45-221(a)(13),(18),(20),(32)	n/a

Public Record	KORA Provision	K.S.A. Provision
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Federal Grants, Applications	45-221(a)(20)	n/a
Federal Grants, Received	none	n/a
Federal Revenue Sharing Records	none	n/a
Federal Tax Liens	none	n/a
Federal Tax Liens, Release of	none	n/a
Fee Books	none	n/a
Fees, Fund Deposit Register	none	n/a
Fence Permits	none	n/a
Film, Movies	none	n/a
Financial Reports	none	n/a
Financial Statements	none	n/a
Fines Dismissed	none	n/a
Fire Alarm Records	none	n/a
Fire Alarm Test Records	none	n/a
Fire Department Records, Alarms	none	n/a
Fire Department Records, Compensation	none	n/a
Fire Department Records, Expenditures ..	none	n/a
Fire Department Records, Personnel	45-221(a)(4)	n/a
Fire Department Records, Practices	none	n/a
Fire Department Records, Reports	none	n/a
Fire Department Records, Runs	none	n/a
Fire Department Records, Schools	none	n/a
Fire District Maps	none	n/a
Fire Hydrant Maintenance & Test Records	none	n/a
Fire Inspection Records	none	n/a
Fire Inspection Schedules	none	n/a
Firearms Owners Index	none	n/a
Firearms Registrations	none	n/a
Firemen's Benefit Fund Ledger	45-221(a)(4)	n/a
Firemen's Insurance Policies	45-221(a)(4)	n/a
Firemen's Pension Board Minutes	none	n/a
Firemen's Pension Records	45-221(a)(4)	n/a
Firemen's Relief Association Records ...	45-221(a)(4)	n/a
Firemen's Training Records	45-221(a)(4)	n/a
Fixed Asset Reports	none	n/a
Flood Plain Maps	none	n/a

Public Record	KORA Provision	K.S.A. Provision
Flood Plain Records	none	n/a
Food Service Inspection Reports	none	n/a
Franchise Records	none	n/a
Franchise Agreements	none	n/a
Fuel Tickets and Receipts	none	n/a
Game Licenses	none	n/a
Gas Fitters' Examinations	45-221(a)(9)	n/a
Gas Inspection Books	none	n/a
Gas Permits	none	n/a
Gasoline Usage Record	none	n/a
General Ledger	none	n/a
Golf Course Receipts	none	n/a
Handicapped Parking Permits Register	none	n/a
Health Insurance Records	45-221(a)(4)	n/a
Historic Landmark Designations	none	n/a
House Moving Applications	none	n/a
House Moving Permits	none	n/a
Housing Authority Board Minutes	none	n/a
Housing Authority, Financial Records	none	n/a
Housing Authority, Tenant Applications	none	n/a
Housing Authority, Tenant List	none	n/a
Housing Inspection Reports	none	n/a
Housing Rehabilitation & Winterization Records	none	n/a
Human Relations Board, Complaints	45-221(a)(5),(11),(14)	n/a
Human Relations Board Investigations	45-221(a)(5),(11)	n/a
Human Relations Board Minutes	none	n/a
Hydrant Flow Test	none	n/a
Hydrant Maintenance Reports	none	n/a
Inoperable Vehicle Notices	none	n/a
Improvement Projects Records	none	n/a
Incident Log Book (Police)	none	22-4701
Information Bulletin, Periodic	none	n/a
Inmate Files, Non-Juvenile	45-221(a)(29)	n/a
Inspection Fee Register	none	n/a
Inspection Logs	none	n/a
Inspection Schedules	none	n/a
Inspection Sheets (Forms)	none	n/a

Public Record	KORA Provision	K.S.A. Provision
Insurance, Certificate of	none	n/a
Insurance Claims	45-221(a)(4)	n/a
Insurance Policies	none	n/a
Insurance Records	45-221(a)(4)	n/a
Inventories, Equipment	none	n/a
Inventories, Land	none	n/a
Inventories, Vehicles	none	n/a
Investment Records	none	n/a
Invoices	none	n/a
Jail Blueprints, Specifications	45-221(a)(12),(13),(18)	n/a
Job Announcements	none	n/a
Job Descriptions	none	n/a
Joint Custody Receipts (with Financial Institutions)	none	n/a
Judge's Docket Summary	none	22-4701
KPERS Annual Statements	none	n/a
KPERS Quarterly Reports	none	n/a
Kennel Fees Receipts	none	n/a
Laboratory Reports	45-221(a)(3)	65-118; 119; 153f
Land Title Abstracts	none	n/a
Land Use Maps, Studies	45-221(a)(20)	n/a
Landfill Records	none	n/a
Landfill Reports	none	n/a
Landfill Tickets	none	n/a
Lease Agreements	none	n/a
Leave Records, Annual	45-221(a)(4)	n/a
Leave Records, Sick	45-221(a)(4)	n/a
Legal Opinions	45-221(a)(25)	n/a
Letters of Credit	45-221(a)(30)	n/a
Liability Claims Filed	none	n/a
Library Board Minutes	none	n/a
Library, Book Circulation Records	45-221(a)(23)	n/a
Library, Financial Records	none	n/a
License Applications	none	n/a
Licenses Issued	none	n/a
Litigation Records, Active	45-221(a)(25)	n/a
Litigation Records, Settled	45-221(a)(1),(25)	n/a
Local Intangibles Tax, Returns	45-221(a)(1)	12-1,108

Public Record**KORA Provision****K.S.A. Provision**

Local Intangibles Tax, Statements	45-221(a)(1)	12-1,108
Local Sales Tax Receipts from State	none	n/a
Low Income Assistance, Applications	45-221(a)(1)	39-709b
Low Income Assistance, Disbursements	45-221(a)(1)	39-709b
Low Income Assistance, Recipients	45-221(a)(1)	39-709b
Low Income Assistance, Rejections	45-221(a)(1)	39-709b
Maps	none	n/a
Maps, Sewers	none	n/a
Maps, Streets	none	n/a
Maps, Utilities	none	n/a
Mechanic Liens	none	n/a
Memoranda	45-221(a)(20)	n/a
Meter Sheets	none	n/a
Meter Work Card	none	n/a
Microfiche Cards	(Depends on Content)	
Microfilm	(Depends on Content)	
Minimum Housing Code Violations	45-221(a)(1),(11)	17-2345
Minimum Housing Complaints, Inspections	45-221(a)(1),(5),(11),(20)	17-2345
Minimum Structures, Designations	none	n/a
Minimum Structures, Enforcement	45-221(a)(5),(11),(20)	n/a
Minimum Structures, Removal	none	n/a
Minimum Structures, Repair	none	n/a
Minutes, Governing Body	none	n/a
Minutes, Boards and Commissions	none	n/a
Mobile Home Permits	none	n/a
Monthly Cash Receipts Analyses	none	n/a
Monthly Financial Reports	none	n/a
Mortgages	none	n/a
Mortgages, Release	none	n/a
Mortgages, Assignments	none	n/a
Mortgages, Assumptions	none	n/a
Motor Vehicle Expense Records	none	n/a
Motor Vehicle Refunds	none	n/a
Motor Vehicle Registrations	none	n/a
Motor Vehicle Servicing Records	none	n/a
Motor Vehicle Shop Work Orders	none	n/a
Mug Books	none	22-4701

Public Record	KORA Provision	K.S.A. Provision
Mug Photographs	none	22-4701
Municipal Code	none	n/a
Municipal Court Convictions	none	n/a
Municipal Court Docket	none	n/a
Municipal Court Fines - Monthly Register	none	n/a
Municipal Court Receipts	none	n/a
Municipal Court Traffic Docket	none	n/a
Newspaper Clippings	none	n/a
News Releases	none	n/a
No Fund Warrants	none	n/a
Nomination Petitions	none	n/a
Notary Bonds	none	n/a
Notes	45-221(a)(20)	n/a
Minimum Housing Complaints	45-221(a)(5),(10),(11)	n/a
Nuisance Investigations	45-221(a)(5),(10),(11),(20)	n/a
Nuisance, Notices to Abate	none	n/a
Nuisance Removal Records	none	n/a
Oaths of Office	none	n/a
Occupancy, Certificate of	none	n/a
Occupational Bonds	none	n/a
Occupational Licenses	none	n/a
Occupation Tax Stubs	none	n/a
Officers, Addresses	none	n/a
Officers, Bonds	none	n/a
Officers, Names	none	n/a
Officers' Salaries and Benefits	45-221(a)(4)	n/a
Oil and Gas Leases	none	n/a
Oil and Gas Leases, Ratification of	none	n/a
Oil Producers and Royalty Owners	none	n/a
Ordinances	none	n/a
Ordinances, Proposed	45-221(a)(21)	n/a
Outstanding Encumbrances	none	n/a
Parade Permits	none	n/a
Park Advisory Board Minutes	none	n/a
Park Visitor Register (Guest book)	none	n/a
Parking Meter Fines	none	n/a
Parking Meter Revenues	none	n/a
Parking Tickets	none	n/a

Public Record	KORA Provision	K.S.A. Provision
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Party Wall Agreements	none	n/a
Pavement and Sidewalk Petitions	none	n/a
Paving and Sidewalk Cost, Estimates &		
Assessments	45-221(a)(13),(18),(32)	n/a
Paving Projects - Original Drawings	45-221(a)(13),(18),(20)	n/a
Pawnbroker Records	45-221(a)(1)	16-715
Pay Plans	none	n/a
Payroll Check Register	45-221(a)(4)	n/a
Payroll Journal	45-221(a)(4)	n/a
Payroll Records	45-221(a)(4)	n/a
Payroll Warrants	45-221(a)(4)	n/a
Performance Bonds	none	n/a
Permit Applications	none	n/a
Permits Granted	none	n/a
Permits Index	none	n/a
Permits Register	none	n/a
Personnel, Awards	none	n/a
Personnel, Demotions	45-221(a)(4)	n/a
Personnel, Discipline	45-221(a)(4)	n/a
Personnel, Employee Evaluations	45-221(a)(4)	n/a
Personnel, Job Applications	45-221(a)(4)	n/a
Personnel, Letters of Reference	45-221(a)(4),(6)	n/a
Personnel, Medical Examinations	45-221(a)(3),(4)	n/a
Personnel, Promotions	45-221(a)(4)	n/a
Personnel, Resignations	45-221(a)(4)	n/a
Personnel, Rules and Regulations	none	n/a
Personnel, Salaries and Benefits	none	n/a
Pesticide Spraying Records	none	n/a
Petitions for Municipal Improvements	none	n/a
Petty Cash Accounting	none	n/a
Photographs	none	n/a
Physicians' Certification Records	none	n/a
Planned Development District		
Applications	none	n/a
Planning Commission Minutes	none	n/a
Planning Studies	45-221(a)(20)	n/a
Plats	none	n/a
Plumbers' Certificates	none	n/a

Public Record	KORA Provision	K.S.A. Provision
Plumbers' Examinations	45-221(a)(9)	n/a
Plumbing Inspections	none	n/a
Plumbing Permits	none	n/a
Police Records, Arrests	45-221(a)(10)	22-4701
Police Records, Complaints	45-221(a)(10)	22-4701
Police Records, Daily Logs	45-221(a)(10)	22-4701
Police Records, Investigations	45-221(a)(10)	22-4701
Police, Identification of Non-Uniformed Personnel	45-221(a)(5)	n/a
Police Blotter	45-221(a)(10)	22-4701
Police Dept. Monthly Reports	45-221(a)(10)	22-4701
Police Docket	45-221(a)(10)	22-4701
Police Investigation Records, Reports	45-221(a)(10)	22-4701
Policies of Governing Body	none	n/a
Policy Manuals	none	n/a
Policy Resolutions	none	n/a
Poll Books	none	n/a
Population Estimates	none	n/a
Population Projections	none	n/a
Population Reports	none	n/a
Postage Meter Records	none	n/a
Precinct Maps	none	n/a
Precious Metal Dealers Records	45-221(a)(1)	16-715
Preliminary Drafts, Reports	45-221(a)(20)	n/a
Prenatal Serological Tests	45-221(a)(1)	65-153f
Pressure Charts	none	n/a
PRIDE Program Project Books	none	n/a
Prisoner Register - Jail	none	n/a
Private Clubs, Class B Licenses	none	n/a
Private Clubs, Class B Applications	none	n/a
Proclamations	none	n/a
Property Acquisition Evaluations, Estimates and Proposals	45-221(a)(13),(18),(20),(32)	n/a
Prosecution Reports	45-221(a)(5),(10)	22-4701
Public Assistance Records	45-221(a)(1)	39-709b; 59-2802
Public Building Blueprints	45-221(a)(12),(18),(20),(32)	n/a
Public Building Plans	45-221(a)(12),(18),(20)	n/a
Public Building Records	none	n/a

Public Record**KORA Provision****K.S.A. Provision**

Public Building Visitor Logs	none	n/a
Public Buildings, Rental Contracts	none	n/a
Public Buildings, Space Reservations	none	n/a
Public Facility Maintenance Reports	none	n/a
Public Property Leases	none	n/a
Public Property, Title Abstracts	none	n/a
Public Property, Title Insurance	none	n/a
Public Property, Title Opinions	45-221(a)(25)	n/a
Public Works Bonds	none	n/a
Publication, Proofs of	none	n/a
Pump Test Records	none	n/a
Purchase Orders	none	n/a
Quarterly Financial Reports	none	n/a
Quarterly Performance Reports	none	n/a
Quarterly Tax Returns	none	n/a
Quarterly Unemployment Reports	none	n/a
Radar Speed Check Sheets	none	n/a
Railroad Crossing Maintenance Records	none	n/a
Railroad Maps	none	n/a
Real Estate, Owners of Record	none	n/a
Real Estate, Property Transfer Records	none	n/a
Real Estate Sales Records	none	n/a
Real Estate Sales Validation		
Questionnaire	45-221(a)(1)	79-1437f
Real Estate Titles	none	n/a
Receipt Forms and Registers	none	n/a
Receipts, Periodic Totals	none	n/a
Receiver, Appointment of	none	n/a
Recreation Commission Minutes	none	n/a
Refuse Collection, Billings	45-221(a)(26)	n/a
Refuse Collection, Customer		
Information Cards	45-221(a)(26)	n/a
Refuse Collection, Payment Records	45-221(a)(26)	n/a
Refuse Collection, Drivers' Reports	none	n/a
Refuse Collection, Service Complaints	45-221(a)(26)	n/a
Registered Electors	none	n/a
Remittance Letters	none	n/a
Requisitions	none	n/a

Public Record	KORA Provision	K.S.A. Provision
Research Analysis and Conclusion	45-221(a)(20),(22)	n/a
Research, Preliminary Data	45-221(a)(20),(22)	n/a
Resolutions	none	n/a
Resolutions, Proposed	45-221(a)(21)	n/a
Resumes, Applicants for Employment	45-221(a)(4),(6)	n/a
Resumes, Current Officers & Employees	45-221(a)(4),(6)	n/a
Resumes, Past Officers & Employees	45-221(a)(4),(6)	n/a
Retirement Records	45-221(a)(4)	n/a
Revenue Statements and Analyses	none	n/a
Rezoning Petitions	none	n/a
Right-of-way Acquisition Agreements	none	n/a
Road Surveys	none	n/a
Rural Fire Protection Contracts	none	n/a
Safety Committee Reports	none	n/a
Salary Range Lists	none	n/a
Salary Withholding Deductions	45-221(a)(4)	n/a
Sales Tax Records	none	n/a
Sandblasting Permits	none	n/a
Sanitary Landfill, Customers Billings	45-221(a)(26)	n/a
Sanitary Landfill, Records	none	n/a
Sanitation Route Map	none	n/a
Sanitation Route Reports	none	n/a
Sanitation Service Receipts	none	n/a
Savings Account Statements	none	n/a
Security Deposit Agreements	45-221(a)(26)	n/a
Security Deposit Records	45-221(a)(26)	n/a
Service Lists, Water Meters	45-221(a)(26)	n/a
Service/Work Orders, City Vehicles	none	n/a
Sewer Assessments	none	n/a
Sewer Connection Agreements	45-221(a)(26)	n/a
Sewer Cost Estimates	none	n/a
Sewer Lines Locations	none	n/w
Sewer Maintenance Record	none	n/a
Sewer Permits	none	n/a
Sewer Plans	45-221(a)(13),(18),(20)	n/a
Sheriff Sales Records	none	n/a
Sidewalk Assessments	none	n/a
Sidewalk Inspection Reports	none	n/a

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Public Record	KORA Provision	K.S.A. Provision
Sidewalk Permits	none	n/a
Sidewalk Repair Orders	none	n/a
Sidewalk Standards	none	n/a
Sign Damage Reports	none	n/a
Sign Permits	none	n/a
Signature Facsimiles	none	n/a
Snow Removal, Assessment of Costs	none	n/a
Snow Removal, Work Orders	none	n/a
Social Security Records	45-221(a)(4)	n/a
Solid Waste Disposal Charges	45-221(a)(26)	n/a
Solid Waste Disposal Receipts	none	n/a
Special Assessments, Books	none	n/a
Special Assessments, Indexes	none	n/a
Special Assessments, Petitions	none	n/a
Special Assessment Plats	none	n/a
Special Assessment Policies	none	n/a
Special Assessment Projects	45-221(a)(13),(18),(20),(32)	n/a
Special Assessment Tax Cards	none	n/a
Special Education Records, Tests & Evaluations	45-221(a)(1)	72-6214
Special Use Permits	none	n/a
Staff Meetings, Minutes	none	n/a
State Sales Tax Distribution	none	n/a
State Withholding Records	none	n/a
Stolen Motor Vehicles Register	none	n/a
Stolen Property Reports	45-221(a)(10)	22-4701
Storage Liens	none	n/a
Storm Drainage Plans - Drawings	45-221(a)(13),(18),(20),(32)	n/a
Storm Sewers, Easements	none	n/a
Storm Sewers, Maps	none	n/a
Storm Sewers, Line Locations	none	n/a
Street Easements	none	n/a
Street Excavation Permits	none	n/a
Street Maintenance Records	none	n/a
Street Maps	none	n/a
Street Rights-of-Way	none	n/a
Street Vacations	none	n/a
Street Section Maps	none	n/a

Public Record	KORA Provision	K.S.A. Provision
Street Survey Index	none	n/a
Street Tree Permits	none	n/a
Street Tree Standards	none	n/a
Subdivision Files	none	n/a
Subdivision Plats	none	n/a
Subdivision Regulations	none	n/a
Substandard Housing, Complaints	45-221(a)(5),(11)	n/a
Substandard Housing, Investigations	45-221(a)(11)	n/a
Substandard Housing, Resolutions	45-221(a)(11)	n/a
Surety Bonds - City Licensees	none	n/a
Surveys	none	n/a
Swimming Pool Records	none	n/a
Swimming Pool Water Analysis	none	n/a
Tap Permits, Sewer	none	n/a
Tap Permits, Water	none	n/a
Tax Appeals	none	n/a
Tax Exemption Certificates	none	n/a
Tax Levy Sheets	none	n/a
Tax Receipts	none	n/a
Tax Roll, Intangibles, (Gross Earnings)	45-221(a)(1)	12-1,108
Tax Roll, Personal Property	none	n/a
Tax Roll, Real Estate	none	n/a
Taxicab Permits, Licenses	none	n/a
Taxicab Insurance Policies	none	n/a
Telephone Contracts	none	n/a
Telephone Billings	none	n/a
Telephone Service Agreements	none	n/a
Temporary Notes	none	n/a
Temporary Note Transcripts	none	n/a
Traffic Accidents, Chronological Index	none	n/a
Traffic Accidents, Street Index	none	n/a
Traffic Device Maintenance Records	none	n/a
Traffic Sign Reports	none	n/a
Traffic Tickets	none	n/a
Traffic Violation Fine Schedule	none	n/a
Transient Guest Tax Records	none	n/a
Travel Vouchers	none	n/a
Treasurer's Financial Statements	none	n/a

Public Record	KORA Provision	K.S.A. Provision
Treasurer's Receipts	none	n/a
Trial Balances	none	n/a
Unemployment Compensation Records	none	n/a
Uniform Commercial Code Recordings	none	n/a
Uniform Crime Reporting Reports	none	22-4701
Urban Renewal, Acquisitions	none	n/a
Urban Renewal, Contracts	none	n/a
Urban Renewal, Plans	45-221(a)(13),(18),(20),(32)	n/a
Urban Renewal Agency, Board Minutes	none	n/a
Urban Renewal Agency, Project Files	none	n/a
Utilities Billing Registers	45-221(a)(26)	n/a
Utility Connections, Applications	45-221(a)(26)	n/a
Utility Connections, Disconnections	45-221(a)(26)	n/a
Utility Customer Deposits	45-221(a)(26)	n/a
Utility Delinquency Records	45-221(a)(26)	n/a
Utility Deposits	45-221(a)(26)	n/a
Utility Facility Maps	none	n/a
Utility Franchise Agreements	none	n/a
Utility Meter Test Records	none	n/a
Utility Production Records	none	n/a
Utility Rate Schedules	none	n/a
Utility Rate Receipts	none	n/a
Utility Rate Service Agreements	none	n/a
Utilities, Customer Names	45-221(a)(26)	21-3914
Utilities, Customer Addresses	45-221(a)(26)	21-3914
Utilities, Vouchers	none	n/a
Vacation & Sick Leave Reports	45-221(a)(4)	n/a
Vacations, Easements	none	n/a
Vacations, Petitions	none	n/a
Vacations, Setbacks	none	n/a
Vacations, Streets	none	n/a
Variances, Zoning	none	n/a
Vaults, Model, Design, Blueprints	45-221(a)(12)	n/a
Vehicle Inspection Reports	none	n/a
Vehicle License Register	none	n/a
Vehicle Gas Reports, City-Owned	none	n/a
Vehicle Repair Orders	none	n/a
Vehicle Registrations	none	n/a

Public Record	KORA Provision	K.S.A. Provision
Vehicle Titles	none	n/a
Vehicular Traffic Analyses	none	n/a
Vendor Catalogs	none	n/a
Vital Statistics, Births	45-221(a)(1)	65-2411
Vital Statistics, Deaths	none	n/a
Vital Statistics, Marriages	none	n/a
Voter Registration Cards or Books	none	n/a
Vouchers	none	n/a
W-2 Forms	45-221(a)(4)	n/a
W-4 Forms	45-221(a)(4)	n/a
Warrant Register	none	n/a
Wastewater Treatment Reports	none	n/a
Water Bacteriological Analyses	none	n/a
Water Chemical Analyses	none	n/a
Water Line Plats & Maps	none	n/a
Water Pollution, Source Data	none	65-170g
Water Tap Permits	none	n/a
Water Well Data	none	n/a
Weed Cutting, Cost Assessment	none	n/a
Weed Cutting, Notices	none	n/a
Weed Cutting, Work Orders	none	n/a
Well Drilling Permits	none	n/a
Well Samples	45-221(a)(19)	n/a
Workers' Compensation Reports	45-221(a)(4)	n/a
Zoning Appeals Board, Minutes	none	n/a
Zoning Appeals Board, Records	none	n/a
Zoning Applications and Petitions	none	n/a
Zoning, Index	none	n/a
Zoning, Maps	none	n/a
Zoning, Regulations	none	n/a
Zoning, Variances	none	n/a
Zoning, Regulations	none	n/a
Zoning, Sign Register	none	n/a

Conditional Duty to Disclose

Although some records by their very nature would appear to be *open* to the public, information contained within the record will occasionally limit the amount of information to be disclosed to the requester. Below is a sample of the types of records that might fall within this designation. It should be noted that this list is only intended to serve as a guide and is not an exhaustive list. Records custodians should always consider how other sections of *KORA* might affect an open records request.

Accident reports may contain records covered by several exemptions: medical records — K.S.A. 45-221(a)(3); or criminal investigation records — K.S.A. 45-221(a)(10). If employee accident reports are made a part of the employee's personnel file exemption K.S.A. 45-221(a)(4) may be relevant. Some parts of the record, however, may be open and the portions not subject to disclosure can be redacted.

Municipal airport records might be restricted under Federal Aviation Administration regulations — K.S.A. 45-221(a)(1); reports of violation of law — K.S.A. 45-221(a)(5); and criminal investigation reports — K.S.A. 45-221(a)(10).

Privacy interests may be at issue with respect to any ambulance or other emergency service record which can be used to identify an individual user of the service — K.S.A. 45-221(a)(30). On the other hand, the time of an ambulance run and the address are likely open to disclosure.

An appointment calendar made or used by a governing body member is not a public record under K.S.A. 45-217(f)(2). Privacy claims may also be raised by other public officers and employees — K.S.A. 45-221(a)(30).

Before disclosing any arrest-related records the records custodian should review the Criminal History Record Information Act, K.S.A. 22-4701 *et seq.* Where such records include information which pertains to the medical condition of individuals, K.S.A. 45-221(a)(3) may apply.

Insurance claims, payments, etc., which are made part of a municipal employee's personnel file would be subject to the exemption set out at K.S.A. 45-221(a)(4).

Budget notes, comments, drafts, etc., made or kept by individual members of the governing body would not be public records under K.S.A. 45-217(f)(2).

Records relating to charges for overdue books could conceivably be used to determine book circulation among identifiable persons. In such cases the individually-identifiable portions of such records can be deleted as provided by exemption K.S.A. 45-221(a)(23).

When water pollution source data may include information relevant to "trade secrets," K.S.A. 65-170g is applicable.

Appendix C

Sample Ordinances and Resolutions

1. Ordinance Establishing Open Records Policy
2. Resolution on Open Records Policy
3. Resolution Establishing Record Inspection and Copying Procedures
4. Resolution Appointing Records Custodians
5. Resolution Appointing a Freedom of Information Officer
6. Ordinance Establishing Fees for Record Inspection and Copying

Sample Forms

1. Request for Record Inspection
2. Record Inspection Request Denial
3. Request for Record Copying
4. Record Copy Request Denial
5. Record Inspection And/Or Copying Delay Notice
6. Permission to Remove Records
7. Notice to Record Requesters
8. Certification of Requester
9. Sample Freedom of Information Brochure

**SAMPLE ORDINANCES
AND RESOLUTIONS**

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING FEES TO BE CHARGED TO PERSONS FOR ACCESSING AND/OR COPYING OPEN PUBLIC RECORDS.

Be it Ordained by the Governing Body of the City of _____, Kansas:

Section 1. Policy. (a) It is hereby declared to be the policy of the city that all public records which are made, maintained or kept by or are in the possession of the city, its officers and employees, shall be open for public inspection as provided by, and subject to the restrictions imposed by, the Kansas Open Records Act (KORA).

(b) Any person, upon request, shall have access to such open public records for the purpose of inspecting, abstracting or copying such records while they are in the possession, custody and control of the appointed or designated records custodian thereof, or his or her designated representative.

Section 2. Records Custodians. The records custodian(s) appointed and designated pursuant to this ordinance shall preserve and protect all public records from damage, disorganization and theft and shall assist, in a timely and efficient manner, any person making request for access to any open public record.

Section 3. Public Request for Access. All city offices keeping and maintaining open public records shall establish office hours during which any person may make a request for access to an open public record. Such hours shall be no fewer than the hours each business day the office is regularly open to the public. For any city office not open Monday through Friday, hours shall be established by the records custodian for each such day at which time any person may request access to an open public record.

Section 4. Facilities for Public Inspection. All city offices keeping and maintaining open public records shall provide suitable facilities to be used by any person desiring to inspect and/or copy an open public record. The office of the city clerk, being the principal recordkeeper of the city, shall be used as the principal office for providing access to and providing copies of open records to the maximum extent practicable. Requesters of records shall be referred to the office of the city clerk except when the requested records are not in that office and are available in another city office.

Section 5. Procedures for Inspection. Any person requesting access to an open public record for purposes of inspecting or copying such record, or obtaining a copy thereof, shall abide by the procedures adopted by the governing body for record inspection and copying, including those procedures established by records custodians as authorized by the governing body. Such procedures shall be posted in each city office keeping and maintaining open public records.

Section 6. Appointment of Official Custodians. The following city officers are hereby appointed as official custodians for purposes of KORA and are hereby charged with responsibility for compliance with that Act with respect to the hereinafter listed public records:

- (a) City Clerk - All public records kept and maintained in the city clerk's office and all other public records not provided for elsewhere in this section.
- (b) City Treasurer - All public records not on file in the office of the city clerk and kept and maintained in the city treasurer's office.
- (c) Chief of Police - All public records not on file in the office of the city clerk and kept and maintained in the city police department.

- (d) Fire Chief - All public records not on file in the office of the city clerk and kept and maintained in the city fire department.
- (e) City Attorney - All public records not on file in the office of the city clerk and kept and maintained in the city attorney's office.
- (f) Clerk of the Municipal Court - All public records not on file in the office of the city clerk and kept and maintained in the municipal court.

Section 7. Designation of Additional Records custodians.

(a) Each of the official custodians appointed in section 6 is hereby authorized to designate any subordinate officers or employees to serve as records custodian. Such records custodians shall have such duties and powers as are set out in KORA.

(b) Whenever an official custodian shall appoint another person as a records custodian he or she shall notify the city clerk of such designation and the city clerk shall maintain a register of all such designations.

Section 8. Duties of Custodians. All city officers and employees appointed or designated as records custodians under this ordinance shall: protect public records from damage and disorganization; prevent excessive disruption of the essential functions of the city; provide assistance and information upon request; insure efficient and timely action and response to all applications for inspection of public records; and shall carry out the procedures adopted by this city for inspecting and copying open public records.

Section 9. Requests to Be Directed to Custodians. (a) All members of the public, in seeking access to, or copies of, a public record in accordance with the provisions of KORA, shall address their requests to the custodian charged with responsibility for the maintenance of the record sought to be inspected or copied.

(b) Whenever any city officer or employee appointed or designated as a custodian under this ordinance is presented with a request for access to, or copy of, a public record which record the custodian does not have in his or her possession and for which he or she has not been given responsibility to keep and maintain, the custodian shall so advise the person requesting the record. Further, the person making the request shall be informed as to which custodian the request should be addressed to, if such is known by the custodian receiving the request.

Section 10. Fee Administration. The city clerk is hereby authorized to provide the clerk's office, and the office of each records custodian, with sufficient cash to enable the making of change for record fee purposes. Each custodian shall transmit all record fee moneys collected to the city treasurer not less than monthly. Each custodian shall maintain duplicates of all records and copy request forms, completed as to the amount of fee charged and collected, which amounts shall be periodically audited by the clerk-finance officer and treasurer of the city.

Section 11. Inspection Fee. (a) Where a request has been made for inspection of any open public record which is readily available to the records custodian, there shall be no inspection fee charged to the requester.

(b) In all cases not covered by subsection (a) of this section, a record inspection fee shall be charged at the rate of \$ _____ per hour per employee engaged in the record search. A minimum charge of \$ _____ shall be charged for each such request.

Section 12. Copying Fee. (a) A fee of \$ _____ per page shall be charged for photocopying public records, such fee to cover the cost of labor, materials and equipment.

(b) For copying any public records which cannot be reproduced by the city's photocopying equipment, the requester shall be charged the actual cost to the city, including staff time, in reproducing such records.

Section 13. Prepayment of Fees. (a) A records custodian may demand prepayment of the fees established by this ordinance whenever he or she believes this to be in the best interest of the city. The prepayment amount shall be an estimate of the inspection and/or copying charges accrued in fulfilling the record request. Any overage or underage in the prepayment shall be settled prior to inspection of the requested record or delivery of the requested copies.

(b) Prepayment of inspection and/or copying fees shall be required whenever, in the best estimate of the records custodian, such fees are estimated to exceed \$_____.

(c) Where prepayment has been demanded by the records custodian, no record shall be made available to the requester until such prepayment has been made.

Section 14. Payment. All fees charged under this ordinance shall be paid to the custodian of the records inspected and/or copied unless the requester has established an account, for purposes of billing and payment, with the city.

Section 15. Effective Date. This Ordinance shall take effect and be in force from and after its publication in the official city newspaper.

Adopted by the Governing Body of the City of _____, Kansas, this
_____ day of _____, 20_____.

RESOLUTION NO. _____

**A RESOLUTION DECLARING THE POLICY OF THE CITY OF _____,
KANSAS, REGARDING OPEN PUBLIC RECORDS.**

Be it Resolved by the Governing Body of the City of _____, Kansas:

Section 1. It is hereby declared to be the policy of the City of _____ that all public records which are made, maintained or kept by or are in the possession of the city, its officers and employees, shall be open for public inspection as provided by, and subject to the restrictions imposed by, the Kansas Open Records Act (KORA) (K.S.A. 45-215 *et seq.*)

Section 2. Any person, upon request, shall have access to such open public records for the purpose of inspecting, abstracting or copying such records while they are in the possession, custody and control of the appointed or designated records custodian thereof, or his or her designated representative.

Section 3. The records custodian(s) appointed and designated pursuant to Resolution No. _____ shall preserve and protect all public records from damage, disorganization and theft and shall assist, in a timely and efficient manner, any person making request for access to any open public record.

Section 4. All city offices keeping and maintaining open public records shall establish office hours during which any person may make a request for access to an open public record. Such hours shall be no fewer than the hours each business day the office is regularly open to the public. For any city office not open Monday through Friday, hours shall be established by the records custodian for each such day at which time any person may request access to an open public record.

Section 5. All city offices keeping and maintaining open public records shall provide suitable facilities to be used by any person desiring to inspect and/or copy an open public record. The office of the City Clerk, being the principal recordkeeper of the City, shall be used as the principal office for providing access to and providing copies of open records to the maximum extent practicable. Requesters of records shall be referred to the office of the City Clerk except when the requested records are not in that office and are available in another City office.

Section 6. Any person requesting access to an open public record for purposes of inspecting or copying such record, or obtaining a copy thereof, shall abide by the procedures adopted by the Governing Body for record inspection and copying, including those procedures established by records custodians as authorized by the Governing Body. Such procedures shall be posted in each city office keeping and maintaining open public records.

Section 7. The records custodian(s) of the City (is) (are) hereby charged with carrying out the intent of this resolution and KORA.

Adopted by the Governing Body of the City of _____, Kansas, this
_____ day of _____, 20_____.

RESOLUTION NO. _____

A RESOLUTION PROVIDING FOR THE MAINTENANCE, PRESERVATION AND PROTECTION OF PUBLIC RECORDS, AND ESTABLISHING PROCEDURES FOR ACCESSING AND COPYING OPEN PUBLIC RECORDS.

Be it Resolved by the Governing Body of the City of _____, Kansas:

Section 1. Procedures Regarding Both Inspection and Copying of Open Public Records. The following procedures are hereby adopted and shall be applied by each official custodian and records custodian:

(a) Consistent with the policy, duties and procedures established by the State of Kansas in K.S.A. 45-215 *et seq.*, all City records custodians shall provide full access and assistance in a timely and efficient manner to persons who request access to open public records.

(b) Records custodians shall adopt and apply open public record access and copy procedures consistent with the policies of the City and with the provisions of the Kansas Open Records Act. Specifically, such procedures will inform members of the public of the procedures to be followed in making a request for inspection or a copy of an open public record, including the hours during which record inspection or copy requests may be made; who a request is to be made to; the forms to be completed in making a request; and the schedule of fees charged.

(c) Records custodians shall adopt and apply procedures which will ensure the protection and preservation of public records with respect to the manner in which such records are inspected and copied.

(d) Records custodians shall take necessary measures, not inconsistent with their duties, to provide full public access to open public records, and to ensure that the essential functions of the custodian's office, department or agency is not disrupted by requests for record inspection and copying.

(e) All inspections and copying of open public records shall be performed by, or under the supervision of, the records custodian responsible for such records.

(f) All persons requesting the inspection of or a copy of open public records shall make such request in writing prior to the request being honored, except that no form shall be required for requests made for records which have been reproduced for free public distribution.

(g) Except as permitted otherwise by the records custodian, all record inspection and copying forms are to be completed by the person requesting the record. The records custodian may demand reasonable identification of any person requesting a record.

(h) Any fees for record inspection or for copies are due at the time the records, or copies thereof, are provided to the requester, unless the records custodian has demanded that prepayment of all or part of such fees be made. Fees are to be paid to the records custodian.

(i) The records custodian shall notify the record requester, prior to commencing search of the record or copies thereof, of his or her estimate of the fee which will be made for honoring the request whenever such estimate exceeds \$_____.

(j) The records custodian shall demand full or partial prepayment of fees whenever his or her estimate for such fees exceeds \$_____. Prepayment may or may not be required of a requester who maintains an account in good standing with the City for purposes of payment of record fees.

(k) The records custodian shall determine and assess a charge covering mailing and handling costs accrued in responding to requests through the mail service.

(l) The records custodian may exercise his or her discretion to reduce or waive any inspection or copying fees when such is in the public interest.

(m) No record inspection or copying charge shall be assessed against officers or employees of the City who make requests which are reasonably necessary to the performance of their official duties.

(n) Hours for making requests for inspection or copying shall be all regular working hours for each day the office maintains regular office hours. If an office keeping or maintaining public records does not have regular office hours Monday through Friday, the official custodian for such office shall establish hours for each such day when no regular office hours are kept, at which time members of the public may make requests for record inspection or copies of records.

(o) Removal of open public records from the office where kept and maintained, for purposes of inspection and/or the making of copies shall be permitted only with the written permission of the records custodian.

(p) The above procedures, as well as any other inspection and copying procedures shall be posted in a conspicuous place in the office of the records custodian.

Section 2. Procedures Regarding Inspection of Open Public Records. The following procedures are hereby adopted and shall be applied by every official custodian and records custodian:

(a) Records custodians shall handle all inspection requests in accordance with their duties to protect and preserve public records and to assist persons requesting inspection of open public records.

(b) All request forms must be completed by the party requesting the record. In all cases the party so requesting must sign his or her individual name to the form. Written requests shall be made on the form provided by the records custodian and presented to the records custodian.

(c) A written request is sufficient if it reasonably describes the record sought. In instances where the requester cannot provide sufficient information to identify a record, the custodian shall assist in making such identification.

(d) No inspection fee shall be charged the requester if the actual cost of locating the records pursuant to one request is less than \$_____ or, in the case of multiple requests brought by the same person or on behalf of the same person, where the actual cost of locating the records pursuant to requests made over a 24-hour period is less than \$_____.

(e) No inspection fee will be assessed when a denial of a request is made. The records custodian shall, upon making a denial of an inspection request, forward a copy of the denial to the City Attorney.

Section 3. Procedures Regarding Copies of Open Public Records. The following procedures are hereby adopted and shall be applied by each official custodian and records custodian:

(a) Records custodians shall handle all copy requests in accordance with their duties to protect and preserve public records and to assist persons requesting copies of open public records.

(b) All request forms must be completed by the party requesting the copies. In all cases the party so requesting must sign his or her individual name to the form. Written requests shall be made on the form provided by the records custodian.

(c) Mechanical reproduction of a record shall not be undertaken when it is the judgment of the records custodian that any available means of mechanically reproducing the subject record is likely to cause damage to such record.

(d) No copy fee shall be assessed when multiple copies of the record requested have been prepared for free public distribution, or when the records custodian determines that the cost of charging and handling the fee exceeds the cost of providing a copy without charge.

(e) No copying fee will be assessed when a denial of a request is made. The records custodian shall, upon making a denial of a copying request, forward a copy of the denial to the City Attorney.

Adopted by the Governing Body of the City of _____, Kansas, this _____ day of _____, 20____.

RESOLUTION NO. _____

A RESOLUTION APPOINTING CUSTODIANS FOR THE PUBLIC RECORDS OF THE CITY OF _____, AND PROVIDING FOR THE DESIGNATION OF ADDITIONAL RECORDS CUSTODIANS.

Be it Resolved by the Governing Body of the City of _____, Kansas:

Section 1. Appointment of Official Custodians. The following city officers are hereby appointed as official custodians for purposes of the Kansas Open Records Act (KORA), K.S.A. 45-215 *et seq.*, and are hereby charged with responsibility for compliance with that Act with respect to the hereinafter listed public records:

City Clerk — All public records kept and maintained in the City Clerk's office and all other public records not provided for elsewhere in this Section.

City Treasurer — All public records not on file in the office of the City Clerk and kept and maintained in the City Treasurer's office.

Chief of Police — All public records not on file in the office of the City Clerk and kept and maintained in the City Police Department.

Fire Chief — All public records not on file in the office of the City Clerk and kept and maintained in the City Fire Department.

City Attorney — All public records not on file in the office of the City Clerk and kept and maintained in the City Attorney's office.

Director of Public Works — All public records not on file in the office of the City Clerk and kept and maintained in the Public Works Department.

Clerk of the Municipal Court — All public records not on file in the office of the City Clerk and kept and maintained in the Municipal Court.

City Librarian — All public records not on file in the office of the City Clerk and kept and maintained in the City Library.

Section 2. Designation Of Additional Records Custodians. (a) Each of the official custodians appointed in Section 1 is hereby authorized to designate any subordinate officers or employees to serve as records custodian. Such records custodians shall have such duties and powers as are set out in KORA.

(b) Whenever an official custodian shall appoint another person as a records custodian he or she shall notify the City Clerk of such designation and the City Clerk shall maintain a register of all such designations.

Section 3. Duties Of Custodians. All city officers and employees appointed or designated under this Resolution shall: protect public records from damage and disorganization; prevent excessive disruption of the essential functions of the City; provide assistance and information upon request; insure efficient and timely action and response to all applications for inspection of public records; and shall carry out the procedures adopted by this City for inspecting and copying open public records.

Section 4. Requests To Be Directed To Custodians. (a) All members of the public, in seeking access to, or copies of, a public record in accordance with the provisions of KORA, shall address their requests to the custodian charged with responsibility for the maintenance of the record sought to be inspected or copied.

(b) Whenever any city officer or employee appointed or designated as a custodian under this Resolution is presented with a request for access to, or copy of, a public record which record the custodian does not have in his or her possession and for which he or she has not been given responsibility to keep and maintain, the custodian shall so advise the person requesting the record. Further, the person making the request shall be informed as to which custodian the request should be addressed to, if such is known by the custodian receiving the request.

Section 5. Fee Administration. The City Clerk is hereby authorized to provide the Clerk's office, and the office of each records custodian, with sufficient cash to enable the making of change for record fee purposes. Each custodian shall transmit all record fee moneys collected to the City Treasurer whenever the amount accumulated exceeds \$_____, but not less than monthly. Each custodian shall maintain duplicates of all records and copy request forms, completed as to the amount of fee charged and collected, which amounts shall be periodically audited by the Clerk-Finance Officer and Treasurer of the City.

Adopted by the Governing Body of the City of _____, Kansas, this _____ day of _____, 20____.

RESOLUTION NO. _____

A RESOLUTION APPOINTING A LOCAL FREEDOM OF INFORMATION OFFICER (FIO) FOR THE (CITY/COUNTY) OF _____, AND PROVIDING FOR THE OFFICER'S DUTIES.

WHEREAS, the Kansas Legislature adopted Sub. HB 2864 requiring that all public agencies covered by the Kansas Open Records Act (KORA) appoint a local FIO; and

WHEREAS, the (City/County) of _____ believes the appointment of a local FIO to assist the public with its open records needs is good for public service and facilitates the public policy of open government.

NOW THEREFORE, Be it Resolved by the (Governing Body of the City/Board of County Commissioners of the County) of _____, Kansas on this _____ day of _____, 2000:

Section 1. Appointment. _____ is hereby appointed as the local FIO and charged with all of the statutory duties prescribed by Sub.HB 2864 and set forth in Section 2.

Section 2. Duties. The local FIO or the officer's designee shall:

(a) Prepare and provide educational materials and information concerning the open records act;

(b) be available to assist the (city/county) and members of the general public to resolve disputes relating to the open records act;

(c) respond to inquiries relating to the open records act;

(d) establish the requirements for the content, size, shape and other physical characteristics of a brochure required to be displayed or distributed or otherwise made available to the public under the open records act. In establishing such requirements for the content of the brochure, the local FIO shall include plainly written basic information about the rights of a requester, the responsibilities of a public agency, and the procedures for inspecting and obtaining a copy of public records under KORA.

Attest:

(City/County) Clerk

(Mayor/Board of County Commissioners)

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING FEES TO BE CHARGED TO PERSONS FOR ACCESSING AND/OR COPYING OPEN PUBLIC RECORDS.

Be it Ordained by the Governing Body of the City of _____, Kansas:

Section 1. Statement of Purpose, Review. It is the purpose of this Ordinance to establish reasonable fees and charges for the provision of access to or copies of open public records in the possession of the City to avoid the necessity of using general public funds of the City to subsidize special services and benefits to a record requester. The official records custodian shall periodically recommend to the Governing Body such changes in this Ordinance as may be necessary to secure this purpose.

Section 2. Inspection Fee. (a) Where a request has been made for inspection of any open public record which is readily available to the records custodian, there shall be no inspection fee charged to the requester.

(b) In all cases not covered by subsection (a) of this section, a record inspection fee shall be charged at the rate of \$____.____ per hour per employee engaged in the record search. A minimum charge of \$____.____ shall be charged for each such request.

Section 3. Copying Fee. (a) A fee of _____ cents per page shall be charged for photocopying public records, such fee to cover the cost of labor, materials and equipment.

(b) For copying any public records which cannot be reproduced by the City's photocopying equipment, the requester shall be charged the actual cost to the city, including staff time, in reproducing such records.

Section 4. Prepayment of Fees. (a) A records custodian may demand prepayment of the fees established by this Ordinance whenever he or she believes this to be in the best interest of the City. The prepayment amount shall be an estimate of the inspection and/or copying charges accrued in fulfilling the record request. Any overage or underage in the prepayment shall be settled prior to inspection of the requested record or delivery of the requested copies.

(b) Prepayment of inspection and/or copying fees shall be required whenever, in the best estimate of the records custodian, such fees are estimated to exceed \$_____.

(c) Where prepayment has been demanded by the records custodian, no record shall be made available to the requester until such prepayment has been made.

Section 5. Payment. All fees charged under this Ordinance shall be paid to the custodian of the records inspected and/or copied unless the requester has established an account, for purposes of billing and payment, with the City. All fees received shall be paid to the City Treasurer whenever the amount of fees collected totals \$_____, but not less than monthly.

Section 6: Effective Date. This Ordinance shall take effect and be in force from and after its publication in the official city newspaper.

Adopted by the Governing Body of the City of _____, Kansas, this _____ day of _____, 20____.

SAMPLE FORMS

REQUEST FOR RECORD INSPECTION

CITY OF _____

(To Be Completed by Requester)

NAME: _____ (Printed)
ADDRESS: _____ (Street)

SIGNATURE: _____ (City, State)

Record Sought: Please provide as specific a description as possible of the record(s) you desire to inspect. Include record titles and dates, as well as the names of city agencies or departments which produced or hold the record(s):

- 1. _____
- 2. _____

(To Be Completed by Records Custodian)

Charges: A charge for providing access of public records is authorized by state law and has been established by the city governing body. These charges are set at a level to compensate the city for the actual costs incurred in honoring your request. The fee schedule established by the city is posted in this office.

The charge to you for accessing the record(s) you request is: \$ _____

Prepayment of the above amount _____ is required _____ is not required.

Time of Request: Date _____ Access Provided: Date _____
Time ____:____ am/pm Time: ____:____ am/ pm

Staff Time Involved: _____ Hours _____ Minutes

Total Charges: \$ _____
Prepaid \$ _____
Paid \$ _____
Billed \$ _____

Records Custodian

Your copy of this form is your receipt.

RECORD INSPECTION REQUEST DENIAL

CITY OF _____

TO: _____ (Name of Requester)

_____ (Address)

Your request, dated _____, 20____ for inspection of the following records has been denied:

1. _____

2. _____

3. _____

(Title or Description of Record Requested)

The undersigned records custodian has determined that:

The record requested, as described above, is not a record which is made, maintained, kept by or in the possession of:

the City of _____

this office, but may be obtainable at _____.

The record requested is not required to be disclosed under the Kansas Open Records Acts (KORA) _____ (cite section of Act relied upon).

Access to the record requested is restricted under federal or state law _____ (cite law relied upon).

It is your right to challenge this denial by means of a legal action brought in _____ District Court.

Records Custodian

REQUEST FOR RECORD COPY

CITY OF _____

(To Be Completed by Requester)

NAME: _____ (Printed)

ADDRESS: _____ (Street)

_____ (City, State)

SIGNATURE: _____

Copies Sought: Please provide as specific a description as possible of the record(s) you desire to copy. Include record titles and dates, as well as the names of city agencies or departments which produced or hold the record(s):

	Record Title/Date	No. of Copies Desired
1.	_____	_____
2.	_____	_____

(To Be Completed by Records Custodian)

Charges: A charge for providing copies of public records is authorized by state law and has been established by the city governing body. These charges are set at a level to compensate the city for the actual costs incurred in honoring your request. The fee schedule established by the city is posted in this office.

The charge to you for copy(s) of the record(s) you request is: \$ _____

Prepayment of the above amount _____ is required _____ is not required.

Time of Request: Date _____ Access Provided: Date _____
Time ____:____ am/pm Time: ____:____ am/ pm

Staff Time Involved: _____ Hours _____ Minutes

Charge per page copied: \$ _____ Charge for use of non-office copying equipment \$ _____

Total Charges: \$ _____
Prepaid \$ _____
Paid \$ _____
Billed \$ _____

Records Custodian

Your copy of this form is your receipt.

RECORD COPY REQUEST DENIAL

CITY OF _____

TO: _____ (Name of Requester)
_____ (Street Address)
_____ (City, State, Zip)

Your request dated _____, 20__ for copy(s) of the following record(s) has been denied:

- 1. _____
- 2. _____
- 3. _____
(Title or Description of Copies Requested)

The above listed record(s) (is) (are) open public record(s) available for your inspection. However, your request for a copy of such record(s) is hereby denied, upon a finding by the undersigned records custodian that:

- ___ Any available method of mechanical reproduction would result in damage to the requested record.
- ___ Production of copies of the requested record is not required under the Kansas Open Records Act (KORA) _____ (cite section of Act relied upon).
- ___ Copying the record requested is restricted under federal or state law _____ (cite law relied upon).
- ___ Other (specify) _____

It is your right to challenge this denial by means of a legal action brought in _____ District Court.

Records Custodian
Date: _____
Time: _____: _____ am/pm

RECORD INSPECTION AND/OR COPY DELAY NOTICE

CITY OF _____

TO: _____ (Name of Requester)

_____ (Address)

Your request, dated _____, 20____ for (____ inspection) (____ copies) of the following record(s) has been delayed:

1. _____

2. _____

3. _____

(Title or Description of Record)

The reason for the delay is:

___ The record requested cannot be located at this time.

___ Please provide additional identification information.

___ Our search for the record is continuing and you will be contacted when it is located.

___ Contact _____ for assistance.

___ The record requested has been temporarily removed from this office. It will be returned and made available to you on or before ____:____ am/pm, _____, 20____.

___ This office is attempting to establish whether the record requested is an open public record.

Records Custodian

Date _____

Time ____:____ am/pm

PERMISSION TO REMOVE RECORDS

The undersigned has requested permission from the records custodian to remove from this office the following record(s) for purposes of (inspection) (copying):

1. _____

2. _____

3. _____

The undersigned hereby agrees to return the above records to the records custodian on or before _____:_____ am/pm _____, 20____.

Name of Requester

Address

Records Custodian

NOTICE TO RECORD REQUESTERS

(To be Posted at each Public Office where Record Requests may be made.)

CITY OF _____

A. CUSTODIANS

The official custodian of records found in this office is:

Additional persons designated as records custodians for this office are:

B. OFFICE HOURS FOR RECORD REQUESTS

Any person requesting a public record made, maintained or kept by this office may make such request anytime during the following hours:

Monday	—	_____:	_____	am to	_____:	_____	pm
Tuesday	—	_____:	_____	am to	_____:	_____	pm
Wednesday	—	_____:	_____	am to	_____:	_____	pm
Thursday	—	_____:	_____	am to	_____:	_____	pm
Friday	—	_____:	_____	am to	_____:	_____	pm

C. INSPECTION AND COPYING CHARGES

The City has established certain record inspection and record copying charges which are intended to compensate the City for the expenses it incurs in the course of honoring your request. Those charges are set out in Ordinance No. _____, a copy of which is available to you at no charge.

D. INSPECTION AND COPYING POLICIES

The City has adopted certain policies and procedures regarding the manner in which your request for record inspection and/or copying is to be made by you and how that request will be handled by this office. Those policies and procedures are set out in Resolution No. _____, a copy of which has been posted in this office, and which is available at no charge.

E. INSPECTION AND COPYING DENIALS

Whenever your request for inspection or copying has been denied you are entitled, by law, to receive a written statement of the grounds for that denial when you request such a written statement from the records custodian.

CERTIFICATION OF REQUESTER

I, _____, having made a written request for access to and/or copies of _____, which is/are (a) public record(s) pursuant to the Kansas Open Records Act (KORA), do hereby certify that I do not intend to, and will not:

- use any list of names or addresses contained in or derived from the record(s) 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
- sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the record(s) 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.

Signature of Requester

Street Address

City, State Zip Code

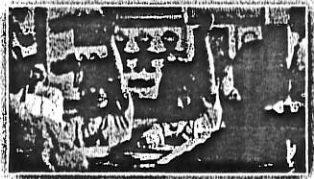
The Kansas Open Records Act governs most records maintained by:



CITIES



COUNTIES



SCHOOL DISTRICTS



STATE AGENCIES

... AND OTHER PUBLIC ENTITIES

For a complete copy of the Kansas Open Records Act, contact your local Freedom of Information Officer or go to www.kslegislature.org, then under "Quick Search" type in the act number in the "Find a statute" box. The Kansas Open Records Act starts at K.S.A. 45-215.

QUESTIONS?

Contact your local Freedom of Information Officer if you have any questions concerning:

- What records are open and available;
- How to obtain a record;
- Any dispute relating to open records;
- The cost of an open record; or
- Any other question relating to open records.

The local Freedom of Information Officer for this public agency is:

 **LKCN**
League of Kansas Municipalities

6-106

A Guide to
**OPEN
PUBLIC
RECORDS**


**KANSAS
ASSOCIATION OF
COUNTIES**

WHAT RECORDS ARE AVAILABLE?

Most records maintained by public entities are open for inspection and/or copying by individuals. Commonly requested records include:

- Ordinances
- Resolutions
- Minutes from open meetings
- Salaries of public officials
- Budgets

EXCEPTIONS

The Kansas Open Records Act recognizes that some records contain information which is private in nature. For this reason, the Act lists a number of exceptions. Records which are closed for this reason may include:

- Personnel information of public employees;
- Medical treatment records;
- Records which are protected by the attorney-client privilege or the rules of evidence;
- Records containing personal information compiled for Census purposes;
- Notes and preliminary drafts;
- Criminal investigation records; and
- Several other specific records.

During the 2004 Legislative Session, two new exemptions were added which protect the following records from disclosure:

- Military discharge papers; and
- Records related to security measures.

For a complete listing of exemptions, see K.S.A. 45-221.

HOW TO REQUEST A RECORD

- Step 1 -

Check with the records custodian or local Freedom of Information Officer to determine whether the information that you need is available. Please remember to be courteous and specific when requesting information so that the custodian will be able to serve you better.

- Step 2 -

You may be asked to submit your request for information in writing. The records custodian may have a prepared form for this purpose. Make sure your request is as specific as possible so that your request may be filled quickly and completely. The records custodian may ask detailed questions in order to fulfill your request accurately.

- Step 3 -

Most records will be produced within three business days from the time the request is received. If the request is denied, you will receive a written explanation for the delay or denial.

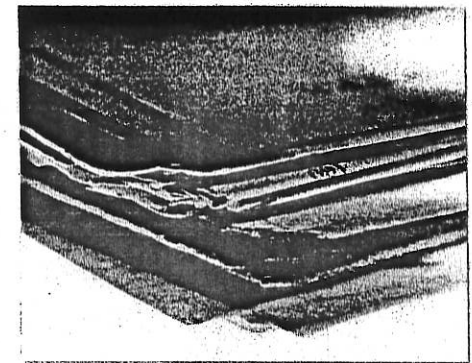
- Step 4 -

If you have any questions about your request, contact your local Freedom of Information Officer.

FEES

The Kansas Open Records Act authorizes public agencies to charge fees for providing access to or furnishing copies of public records. This fee may be requested in advance and may include:

- Cost of staff time required to make the information available.
- Cost of copying or reproducing the record.



WHY WOULD MY REQUEST BE DENIED?

Although every attempt will be made to provide the information requested, it is not always possible to fulfill the request. There are a number of reasons that a request may be denied:

- The specific record that was requested does not exist;
- The request was unclear and should be resubmitted with more detail;
- The record that was requested is closed to protect an important privacy interest (see the list of exceptions to the Kansas Open Records Act at K.S.A. 45-221).

401-9

Appendix D

Laws Restricting Access to Records

The following list sets out many of the laws which records custodians should examine in conjunction with the Kansas Open Records Act (KORA), as they refer to records disclosure of which may be prohibited or restricted by law.

This is **not** intended to serve as a comprehensive listing of all laws restricting access to government records. Statutes which apply only to a limited number of local governmental units and statutes relating to the operation of the state courts or other branches of the state government have not been included. See also the list in K.S.A. 45-229, the text of which may be found in Appendix A.

I. State Laws

Kansas Statutes Annotated	Subject of Record	Public Agency Most Likely To Have Record
3-143;3-144j	Sealed bids; conveyance of real estate	Governing body
12-4516	Conviction records; expungement	Municipal court
16-715	Pawnbroker and precious metal dealer reports	Law enforcement agencies
17-2345	Records from hearings held under authority of Municipal Housing Law	Governing body
21-3827	Unexecuted warrant	Law enforcement agencies
21-4605	Presentence Reports	Law enforcement agencies
21-4619	Expunged conviction records	Law enforcement agencies
22-4701 <i>et seq.</i>	Criminal history record information	Law enforcement agencies
25-2422;2708	Ballots	Election officers

Kansas Statutes Annotated	Subject of Record	Public Agency Most Likely To Have Record
25-3008	Election supplies and ballots	County election officer
38-1607; 1608	Juvenile offense records	Law enforcement agencies
38-1507; 1508	Child abuse or neglect records and reports	Law enforcement agencies
39-709b	Recipients, applicants for state assistance	Local social service agencies
79-1437f	Real Estate Sales Validation Questionnaire	County Register of Deeds, County Assessor
59-2802	Public assistance records; court-ordered reports	County Department of Social Welfare
59-2979	Mental health treatment, medical and court records	Mental health agencies
59-2979	Arrest reports; mentally ill persons	Law enforcement agencies
59-29b79	Alcohol treatment patients; court, hospital, medical records	Alcohol treatment facilities
65-118; 119	Reports on infectious or contagious disease	Local health agencies
65-153f	Prenatal serological test results	Local health agencies
65-170g	Water pollution source records, reports, data	Local water pollution control authorities
65-2411	Illegitimate children records (foundling registration)	Local register of vital statistics
72-6214	Student files and data	School boards of education
72-8901 <i>et seq.</i>	Student expulsion, suspension records	School boards of education

Kansas Statutes Annotated	Subject of Record	Public Agency Most Likely To Have Record
72-9005	School employee evaluations	School boards of education
74-4909	KPERS members' accounts and records	Personnel office
80-2515	Sealed bids for real or personal property	Hospital boards of trustees

II. Federal Laws:

K.S.A. 45-221(a)(1) provides that a public agency is not required to disclose "Records the disclosure of which is specifically prohibited or restricted by federal law. . . or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law. . .to restrict or prohibit disclosure."

It is beyond the scope of this manual to list the many federal laws which prohibit or restrict disclosure of records. Those public agencies which are involved in federal programs must be familiar with the laws which are applicable to such programs. When denying a record request on the basis of a federal law restricting or prohibiting disclosure the custodian should make every effort to provide a complete cite to the specific federal law which controls.

Records custodians should view two types of federal laws as relevant to their duties under KORA: (1) those which make disclosure unlawful and (2) those which "penalize" the agency disclosing the record by cutting off federal funds — i.e., laws which provide indirect prohibitions against disclosure. Examples of records generally governed by federal law include certain student records, public assistance and unemployment insurance records, trade secrets, social security numbers, and certain commercial, financial and personnel-related records.

Appendix E

Kansas Case Law

1. Provisions of this act not retroactive; due to repeal of 45-201 et seq. and enactment hereof, personnel files specifically excepted. *Tew v. Topeka Police & Fire Civ. Serv. Comm'n*, 237 Kan. 96, 102, 105 697 P.2d 1279 (1985).
2. Legislative intent considered in reviewing purpose of act; disclosure of criminal investigation records. *Harris Enterprises, Inc. v. Moore*, 241 Kan. 59, 60, 62, 63, 734 P.2d 1083 (1987).
3. Cited; nonresidents' purchase of Kansas Turnpike Authority bonds as more than "passive investment activity" by seeking KTA records hereunder examined. *Kansas Turnpike Authority v. Wheeler*, 243 Kan. 602, 617, 760 P.2d 1213 (1988).
4. Disclosure of K.B.I. reports to racing license applicants permitted hereunder and 74-8804, subject to provisions of 45-221. *Kansas Racing Management, Inc., v. Kansas Racing Comm'n*, 244 Kan. 343, 353, 770 P.2d 423 (1989).
5. Interpretation of act by public employee relations board not entitled to judicial deference; agencies not allowed unregulated discretion to refuse information. *State Dept. of SRS v. Public Employee Relations Board*, 249 Kan. 163, 815 P.2d 66 (1991).
6. Possible evidence of law officer's reputation for excessive force in making arrests (K.S.A. 21-3215) examined. *State v. Deavers*, 252 Kan. 149, 157, 843 P.2d 695 (1992).
7. Records of contracts and letters relating to compensation of nonemployee doctors were denied exemption under K.S.A. 45-221(a)(4) and (15). *Southwest Anesthesia Service, P.A. v. Southwest Medical Center*, 23 Kan. App. 2d 950, 937 P.2d 1257 (1996).
8. Kansas Sex Offender Registration Act registration records are normally open to public inspection but as applied to defendant were not subject to the provisions of KORA. *State v. Myers*, 260 Kan. 669, 923 P.2d 1024 (1996).
9. Doctor's autopsy records were not exempt from disclosure as medical records under K.S.A. 45-221 and his working papers could be disclosed once his report became a public record, but medical records of the deceased made prior to death could not become public records because disclosure would violate the privacy of the deceased. *Burroughs v. Thomas*, 23 Kan. App. 2d 769, 937 P.2d 12 (1997).
10. Defendant's minimal sentence for aggravated sexual battery not grave enough to order his registration as a sex offender under the Kansas Sex Offender Registration Act and subject his record to public disclosure under KORA. *State v. Scott*, 24 Kan. App. 2d 480, 947 P.2d 466 (1997).

11. Disclosure of a sex offender's registration information on the internet does not violate the disclosure provisions of the Kansas Offender Registration Act (KORA) or the Open Records Act. *State v. Stevens*, 26 Kan. App. 2d 606, 992 P.2d 1244 (1999).
12. Narrative statements in attorney billing statements were not per se exempt from production under either attorney-client privilege or work product doctrine exceptions to KORA; and city's privilege log failed to comply with trial court's order. *Cypress Media, Inc. v. City of Overland Park*, 268 Kan. 407, 997 P.2d 681 (2000).
13. Accident report involving a fatality an open record. *Willis v. Kansas Highway Patrol*, 273 Kan. 123, 41 P.3d 824 (2002).
14. Addresses supervision history of parolees and other inmate records. *Wichita Eagle and Beacon Publishing Co., Inc. v. Simmons*, 274 Kan. 194, 50 P.3d 66 (2002).
15. Agency denial of records of county railroad crossing hazard ratings was not in good faith or with a reasonable basis in fact or in law. The plaintiff was entitled to attorneys fees. *Telegram Publishing Co., Inc. v. Kansas Department of Transportation*, 275 Kan. 779, 69 P.3d 578 (2003).
16. Register of deeds has authority to redact records and the cost of the redaction must be borne by the company. *Data Tree, LLC v. Meek, Sedgwick County Register of Deeds*, 279 Kan. 445, 109 P.3d 1226 (2005).

Appendix F

Attorney General's Opinions

- 2004-34 Open Records; Definition of Public Agency; Sheltered Living
- 2004-32 Open Records; Records of child abuse or neglect resulting in fatality or near fatality
- 2004-1 Open Records; Workers compensation paid loss reporting forms
- 2002-55 Open Records; Utility customers names and addresses for billing purposes
- 2002-1 Open Records; Electronic mail between city council members
- 2001-33 Open Records; Membership list and addresses for municipal golf course
- 2001-22 Open Records; Private Health Service entity not public agency
- 2001-18 Open Records; Legislative Post Audit Records
- 2001-13 Open Records; Finney County Economic Development Corp. a public agency
- 2000-35 Open Records; List of new utility customers (not specifically named) is exempt
- 2000-08 Open Records; Medical Advisory Board; Certain Records Not Required to be Open
- 99-55 Open Records; Consulting Contract
- 99-48 Open Records; Attorney-Client Privilege; Work Product
- 98-55 Open Records; Exception to Disclosure
- 98-51 Open Records; Unlawful and Burdensome Requests
- 98-38 Open Records; Standard Offense Report
- 98-5 Open Records; Bank subsidiary formation information
- 97-85 Open Records; Ad Astra funds
- 97-79 Open Records; Use of names to solicit advertising
- 97-76 Open Records; Board of accountancy correspondence
- 97-64 Open Records; NCAA is not a public agency
- 97-52 Open Records; Public employees home address records
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- 96-77 Open Records; District court judges' telephones records
- 96-68 Open Records; Use of names from public record list
- 96-61 Open Records; Open Meetings Act
- 95-119 Open Records; Effect of record review on executive session
- 95-94 Open Records; Confidentiality of juvenile offender records
- 95-67 Open Records; Kansas Association of Counties

95-64 Open Records; Inspection
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- 89-107 Open Records; Personnel Records Maintained by the Sheriff
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- 88-61 Open Records; Names & Salaries of Employees
- 87-149 Open Records; Letter from Private Attorney to City Councilmember
- 87-137 Open Records; Prohibited Purposes
- 87-73 Open Records; Lists of Names & Addresses
- 87-25 Open Records Act; Jail Book, Standard Offense Report, Mug Shots
- 87-4 Open Records Act; Cost
- 86-101 Records Subject to Disclosure



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Kansas Open Meetings Manual

2005 Edition

**A Resource for
Kansas Government
Officials**

Prepared and published by the League of Kansas

**Elections and Local Government
February 2, 2006
Attachment 7**

Kansas Open Meetings Act

A Manual for Kansas Government Officials

Prepared and Published by

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About the League of Kansas Municipalities

Established by municipal officials in 1910, the League of Kansas Municipalities is a voluntary, nonpartisan federation of over 550 Kansas cities. It operates as a public agency and is defined by state laws as an instrumentality of its member cities. The powers and duties of the League are prescribed by state law and in bylaws adopted by the voting delegates of its member cities. The mission of the League shall be to unify, strengthen, and advocate for the interests of Kansas municipalities to advance the general welfare and promote the quality of life of the people who live within our cities.

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Foreword

Across our nation Kansas has a reputation for good government, and it is due in no small part to our shared belief in open, accessible government. Making government decisions in public views not always easy or the most efficient way to govern, but most Kansans would not have it any other way. Many of our political traditions and aspirations are based on this commitment to openness, and any number of conflicts in our state's history can probably be traced to isolated failures to respect this deeply rooted value.

Since its enactment in 1972, the Kansas Open Meetings Act (KOMA) has contained a body of minimum standards for conducting open government meetings. During the past 33 years, attorneys at the League of Kansas Municipalities (LKM) have been called on hundreds (if not thousands) of times to explain its intent, scope, and effect. On many occasions LKM has advised legislative committees about the likely impact of proposed changes in KOMA, urging at each opportunity that the legislature carefully balance the goal of open, accessible government with the many public and private interests affected by government action.

LKM devotes considerable resources each year to training local officials to comply with the minimum standards contained in KOMA. We frequently receive complaints about aspects of the law which cause hardships to a local governing body or members of the public. After over a quarter of a century of experience, it is clear KOMA is far from perfect and, in some cases, it is difficult to follow. We feel duty-bound, however! to provide every opportunity to the elected and appointed leaders of our state to learn the basics about this important law and how to comply with its minimum standards.

After years of interpreting KOMA and after numerous requests, LKM is pleased to offer this updated informative manual on the subject for policy makers, attorneys and administrators alike. It represents our most complete and considered advice on KOMA to date. Most of the interpretations of KOMA in the manual are compatible with opinions issued over the years by the Office of the Attorney General or other advisors. In those instances in which there are differences, however, we have made every effort to give thoughtful consideration to the opinions of others. We sincerely appreciate and acknowledge the significant contribution made over the years by the Office of the Attorney General in interpreting KOMA, and numerous references to these published opinions appear in the manual.

Finally, I want to acknowledge the significant contribution of Kimberly Winn, Director of Policy Development & Communications for the League, who was the principal author for this publication in 1996 as well as the current update.

Don Moler
Executive Director
August, 2005

Executive Summary

Scope of the Act. The Kansas Open Meetings Act (KOMA - K.S.A. 75-4317 *et seq.*) applies when (1) the body involved is a covered entity; and (2) there is a "meeting." A "meeting" occurs when a majority of a quorum of the covered entity engages in interactive communication to discuss the business of the body.

KOMA Requires:

- All meetings, other than validly called executive sessions, must be held in open session.
- Notice must be provided to all individuals who have requested it.

Executive Session. During an open meeting, the governing body may recess into executive session only for the discussion of those topics specified provided for in K.S.A. 75-4319(b).

Topics Typically Used by Local Governments

- Personnel matters of nonelected personnel;
- Consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;
- Matters relating to employer-employee negotiations;
- Matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution;
- Preliminary discussions relating to the acquisition of real property;
- Matters relating to security measures.

Topics Typically Used by State Government

- Review of KBI files by the Kansas Racing Commission;
- Discussion of child abuse and neglect by SRS and law enforcement agencies;
- State Child Death Review Board;
- Workers Compensation Advisory Council when involved in certain meetings;
- The Medicaid Drug Utilization Review Board when discussing identifiable patients or providers;
- Matters required to be discussed pursuant to a tribal-state gaming compact.

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No binding action may be taken during an executive session. However, entities covered by KOMA may discuss the issue and reach a consensus during a closed session.

Enforcement. The Attorney General or county or district attorney may file suit for injunction, mandamus, invalidation of action, or civil penalties against a public entity or its members for KOMA violations. Private citizens may file suit seeking injunction or mandamus for KOMA violations. Civil penalties of up to \$500 for each violation may be imposed. Alleged KOMA violations may be grounds for ouster or recall proceedings.

Chapter I

Scope of Act

There is no inherent right of the public or the press to attend meetings of governmental bodies. *Stephan v. Board of Seward County Commissioners*, 254 Kan. 446 (1993). Such rights must be established by legislative enactment. To that end, the Kansas Legislature adopted the Kansas Open Meetings Act (KOMA - K.S.A. 75-4317 *et seq.*) to ensure that the business of governing is done in full view of the public. KOMA is applicable when:

- The body involved is a covered entity; and
- There is a "meeting."

A. Covered Entities

"...all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds..." K.S.A. 75-4318(a).

It is readily apparent from this language that the state legislature, city governing bodies, county commissions, and township boards are all subject to KOMA. The more difficult issues arise when determining whether subdivisions, agencies, and other groups are subject to the Act. In analyzing whether a particular body is covered by KOMA two questions must be answered in the affirmative:

- Is the entity a legislative or administrative body?
- Does the body receive or expend public funds?

Legislative and Administrative Bodies. This requirement indicates that the entity must be public in nature in order to be covered by KOMA. The terms "legislative" and "administrative" imply that the body must be acting in some governmental capacity. There are several Attorney General opinions that are consistent with this interpretation and opine that truly private entities whose only relationship to government is a contractual one are not subject to KOMA.

Public Funds Test. As the statutory language indicates, KOMA was intended to cover those entities that expend public funds. Courts have applied the two part public funds test to determine whether particular entities are covered.

- Does the entity itself receive or expend public funds?
- Does a parent group of the entity receive or expend public funds?

If the answer to either of these questions is "yes," then the entity is covered by KOMA. The first question clearly encompasses all political taxing subdivisions of the state. Agencies and committees established by taxing entities also are covered. For example, the Kansas Corporation Commission, a state agency, is covered by KOMA. *Southwestern Bell Telephone Co. v. Kansas Corporation Commission*, 6 K.A.2d 444, 459 (1981).

Further, courts have reasoned that an entity is covered by KOMA when a parent group of the entity receives or expends public funds regardless of whether the entity itself does or does not. The board of trustees of a county hospital is a subordinate group of the county, and is therefore subject to KOMA. *Murray v. Palmgren*, 231 Kan. 524 (1982). Further, a nonelected citizen's board established by a county commission to oversee a county hospital is covered by KOMA even though the nonelected board itself does not have the authority to receive or expend public funds. *Memorial Hospital Association, Inc. v. Knutson*, 239 Kan. 663 (1986). The same court decided, however, that a management company leasing property from the county hospital board was a separate entity not subject to KOMA. *Id.*

In the most recent case to consider the scope of KOMA, the Kansas Court of Appeals dealt with the issue of "budget teams" which were created by then Governor-elect Kathleen Sebelius. The Court determined that neither the Governor's Transition Office nor the budget review committees created by the Governor were subject to KOMA. The Court reasoned that the Transition Office was not a state agency. Furthermore, they opined that even if the Transition Office was considered a state agency, the budget teams were not subordinate groups because they were assigned by Governor Sebelius individually. See *AP v. Sebelius*, 31 K.A. 2nd 1107 (2003).

It appears in this case that the Court has carved out an exception to the general "public funds" test with regard to the facts in this case. It is unclear whether the same exception would be extended by a court to boards and committees established by local governments, therefore, we recommend that all such boards and committees comply with the rules established by KOMA.

The Sunflower Foundation: Health Care for Kansas, an agreement between the Attorney General and Blue Cross and Blue Shield of Kansas, Inc. has

been statutorily defined as a public agency which is subject to KOMA. K.S.A. 75-4320c

Exceptions. KOMA provides several exceptions for entities which do not have to comply with the provisions of the Act.

“The provisions of the open meetings law shall not apply:

- (1) To any administrative body that is authorized by law to exercise quasi-judicial functions when such body is deliberating matters relating to a decision involving such quasi-judicial functions;
- (2) to the parole board when conducting parole hearings or parole violation hearings held at a correctional institution;
- (3) 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; and
- (4) if otherwise provided by state or federal law or by rules of the Kansas senate or house of representatives.” K.S.A. 75-4318(f).

For local governments, the most commonly used exception to the application of KOMA is for administrative bodies when they are acting in a capacity that is judicial in nature. Administrative bodies act in a “quasi-judicial” manner when they investigate facts, draw conclusions from the facts, and exercise discretion of a judicial nature. *Black’s Law Dictionary*, Revised Fourth Edition, pg. 1411 (1968). Examples include arbitration board hearings, *In re Arbitration between Johnson Construction and U.S.D. 210*, 233 Kan. 527 (1983), and discussions of zoning change applications, *International Villages v. Jefferson County*, 224 Kan. 654 (1978).

Research Tool. The Attorney General has issued the following opinions on what are considered quasi-judicial functions under KOMA.

97-40

97-41

Non-Profit Entities. There was an attempt during the 2005 Legislative Session to bring certain non-profit entities that receive public funds under the requirements of KOMA. A compromise position was reached which requires that any not-for-profit entity that receives public funds in an aggregated

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amount of \$350 or more per year must document the receipt and expenditure of such funds. Such document is open for public inspection. Further, if the entity does not segregate the public funds from other sources of revenue in its accounting system, then the entire accounting of its expenditures and receipts shall be open to the public. These new provisions do not apply to health care providers, individual persons, for-profit corporations or partnerships. (2005 Kansas Session Laws, Chapter 126.)

Specific Entities. The Attorney General has issued the following legal opinions concerning the applicability of KOMA to particular bodies.

<u>Entities Covered by KOMA</u>	<u>AG Opinion No.</u>
Advisory Committee - Fire District	86-84
Advisory Committee - School District	84-81
City/County Alcohol Fund Advisory Committee	80-201
City/County/Chamber Job Development Council	86-48
City Manager - Acting as Individual Advisor	86-92
Community Action Agency (nonprofit)	84-10
Community Mental Health Centers	94-111
Corrections Ombudsman Board	80-102
County Developmental Group (private, nonprofit)	87-188
County Fair Associations	88-48
Drug Utilization Review Committee	93-41
Extension Councils (K.S.A. 2-611)	2000-63
Finney County Economic Development Corp.	2001-13
Handicapped Living Programs, Inc. (nonprofit)	88-27
Hazardous Waste Disposal Facility Board	82-266
Historic Preservation Commissions	99-22
Hospitals (organized with donations)	86-38
Kansas Corporation Commission (rate-making)	83-32
Kansas Racing Commission	88-3
Kansas Turnpike Authority	93-130
Legislative Coordinating Council	82-141
Legislative Conference Committees	93-113
Levee Districts	90-69
Memorial Hospital Association (nonprofit)	85-49
Parental Boards to Recreation Commission	93-73
Recreation Commissions	95-112
Rural Water Districts (if receive public funds)	88-97
Three Rivers, Inc. (private, nonprofit)	87-143
Township Boards	81-288

<u>Entities Not Covered by KOMA</u>	<u>AG Opinion No.</u>
Ad Astra Funds (Private)	97-85
Association for K-10 Development (private)	94-42

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Chamber of Commerce	89-149
City Grievance Committee	91-31
Consensus Estimating Group (private)	94-93
Electric Cooperatives	85-175
Hesston Area Senior Center (nonprofit)	2001-2
Kansas Cosmosphere (private)	82-256
Kansas Venture Capital, Inc.	94-107
KU Endowment Association	80-239
Koch Crime Commission (private)	94-55
Legislative Political Caucuses (by rule)	81-26
Mid-America Commercialization Corporation	94-99
Parochial School Boards	81-94
Planned Parenthood (nonprofit)	81-253
Prairie Village Development Corporation (nonprofit)	99-64
Precinct Committees	94-157
Sheltered Living	2004-34
Spirit of '76, Inc. (private)	91-150
Supreme Court Nominating Commission	82-254

B. "Meeting" Defined

"As used in this act, '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."
K.S.A. 75-4317a

Any gathering must meet numerical and substantive requirements in order to be a "meeting" subject to KOMA. All three of the following elements must be met in order for there to be a "meeting" which must meet KOMA requirements:

- Majority of a quorum
- Interactive communication
- Discussing the business of the body

It should be noted that a previous version of this statute contained a requirement that the meeting be "prearranged" before KOMA would apply. The prearrangement requirement has been removed from the current statutory language, and is therefore no longer an element of a "meeting."

Majority of a Quorum. Absent statutory requirements to the contrary, the general legal rule is that a majority of a governing body constitutes a quorum.

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See *State v. Board of Sedgwick County Commissioners*, 244 Kan. 536, 540 (1989). Statutory quorum requirements for cities are as follows:

<u>Class</u>	<u>Form of Gov't</u>	<u>Statute</u>	<u>Quorum Requirement</u>
1 st	Mayor/Council	13-1410	Majority of councilmen elected
2 nd	Mayor/Council	14-111	Majority of councilmen elect
2 nd	Commission	14-1308	Majority of the board
3 rd	Mayor/Council	15-106	Majority of councilmen elect
3 rd	Commission	15-1409	Majority of board members

These statutes make it clear that only councilmembers or commissioners are counted when determining the number which constitutes a quorum. The mayor in council cities does not count for quorum determinations. However, in commission cities where the mayor is also a commissioner, the mayor is included in the quorum determination. The quorum requirement is static and does not change as a result of vacancies or abstentions.

In order for KOMA to apply, a majority of the established quorum of the body must be engaged in the meeting.

Example:

In a mayor/council city with five councilmembers, the statutory quorum requirement is three. Therefore, a majority of a quorum is two. In this situation, KOMA would apply when two councilmembers are engaged in a "meeting."

As the example points out, this definitive numerical requirement can be quite restrictive. It is important to remember that KOMA is not applicable just because two members of the council are physically in the same place. The numerical requirement is only one element of a "meeting" which must be met before KOMA applies. KOMA only applies when the requisite number (majority of a quorum) engage in interactive communication and discuss the business of the body.

KOMA applies even when the governing body is engaged in a joint meeting with another body or with other individuals. ***Anytime*** a majority of a quorum of a covered entity meets (and the other two elements are met), KOMA applies. Because the mayor, city manager, and other non-councilmembers do not count in the quorum requirement, they may meet with any number of councilmembers who make up less than a majority of a quorum without implicating KOMA.

Quorum requirements for *officially* appointed, separate sub-groups and boards subject to KOMA are not established by statute. As such, a **majority of the members** of such a group must be present to constitute a quorum even if members of the governing body are part of these subordinate groups. The quorum requirement for the actual governing body still applies to other *unofficial* group gatherings invoking the requirements of KOMA only when a **majority of a quorum** of the governing body is present at the meeting.

A common question asked by city officials is whether there is a violation of KOMA whenever a majority of a quorum of governing body members show up to some kind of public meeting or forum. As a general rule, so long as the members of the governing body do not engage in a discussion at the public meeting, there is no violation of KOMA. See Attorney General Opinion 2000-64 for an example of this situation. However, members of the governing body should always be aware that certain conduct may give the appearance of impropriety and thereby undermine the public's trust. Governing body members should exercise extreme caution in any situation where a majority of a quorum could be perceived as discussing the business of the body outside of a validly called open meeting.

The statutes that establish quorum requirements for cities are nonuniform and may, therefore, be altered by passage of a charter ordinance (see sample ordinance in Appendix A). County commissions also may alter their quorum requirements. *State v. Board of Sedgwick County Commissioners*, 244 Kan. 536 (1989). Of course, raising the quorum requirement means that more members of the governing body will be needed in order to conduct business. Governing bodies should weigh this additional hindrance against the added convenience of allowing more members to communicate before raising the quorum requirement.

Interactive Communication. The Act applies when there is a "gathering, assembly, telephone call or any other means of interactive communication" between a majority of a quorum of a covered entity. K.S.A. 75-4317a. Clearly, members of the body are involved in a gathering or assembly when they are in the physical presence of one another. *Stephan v. Board of Seward County Commissioners*, 254 Kan. 446, 449 (1993). Further, it is readily apparent that a telephone call includes both conference calls and personal calls. The Attorney General recently opined that governing bodies may lawfully conduct meetings via telephone and conference calls so long as the other requirements of KOMA (notice and openness to the public) are met. See Attorney General Opinion 2005-3.

Modern technology has made the question of what constitutes "other interactive communication" a little more complicated. A literal interpretation of the term would lead to the conclusion that the following forms of communication are interactive, and therefore subject to KOMA when a majority of a quorum of the body participates:

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- Work Sessions
- Staff Briefings
- Telephone Calls
- Video Conferencing
- On-Line Communication (when there is opportunity for contemporaneous interaction)

The following generally do not qualify as interactive communication:

- Written Memoranda (including letters, postcards, etc.)
- Electronic Mail
- Faxed Communication

While electronic communications have brought a great deal of efficiency to local governments, they have also muddied the waters when it comes to KOMA. Back in 1995, the Attorney General issued the following statement with regard to the purchase of computer terminals for use by school board members:

School board members may be in violation of the Kansas open meetings act if three or more board members simultaneously engage in interactive discussion of board business through use of computer terminals. However, simply sending a message to other board members would not, standing alone, constitute an "interactive communication" within the meaning of the act.

In this example, the Attorney General is indicating that the mere fact that the communication is electronic does not raise a KOMA issue. However, if a majority of a quorum utilize the electronic communication to engage in "interactive discussions," such contact may be held to violate KOMA.

Therefore, it is likely that a single email sent to other council members would not be considered a violation of KOMA. However, participation in an online chat-room or instant message may be considered a violation of KOMA because of the "interactive" nature of the communication.

In addition, governing body members should be careful not to use non-interactive communication in a fashion which violates the spirit of KOMA. In other words, two councilmembers (where two is a majority of the quorum) sitting at computer terminals simultaneously sending messages and responses to one another via electronic mail are violating at least the spirit of KOMA.

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Discussing the Business of the Body. The final requirement states that a majority of a quorum of the governing body must be discussing the business of the body in order for KOMA to apply. Individual members of governing bodies may gather for purposes other than discussing the business of the body.

Example:
All of the members of a city governing body may gather for a barbecue at the Mayor's house without inviting members of the public or the press. However, as soon as the discussion turns to city business, there is a technical violation of KOMA.

It is important for governing body members to remember that the purpose of KOMA is to ensure that public business is discussed in properly noticed public meetings and not at informal gatherings outside the view of the public.

Again, the caveat regarding the appearance of impropriety applies here as well. If several members of the governing body are seen together in public engaged in discussion, some might believe that a violation of KOMA has occurred because they will assume that the members are discussing the business of the body. Governing body members should use caution and sound judgment whenever they engage in conversations with other members of the governing body.

Research Tool. The Attorney General has issued the following opinions on the definition of a meeting pursuant to KOMA:

80-28	81-268	91-31	2001-27
80-43	82-16	91-73	2005-3
80-159	82-266	93-140	
80-173	83-174	95-13	
80-197	84-103	98-26*	
81-262	86-110	98-49*	
81-264	87-45	2000-64	

*In 1998, the Attorney General issued two opinions (98-26 and 98-49) regarding the application of KOMA to serial communications, more commonly known as "Calling Trees." See Appendix B for the League's interpretation of these opinions.

C. Types of Meetings

KOMA applies to all types of meetings held by governing bodies when a majority of a quorum is present. These include:

Regular Meetings. The frequency of regular meetings of the governing body is determined by the class of city and the form of government adopted by the city. In mayor-council cities of all three classes, meetings must be held at least once per month at a time specified by ordinance. You should make sure that your regular meeting ordinance specifies what happens when your regular meeting date falls on a holiday.

Special Meetings. Only the business for which the special meeting is called may be considered and acted upon by the governing body. Special meetings are for special purposes only. Regular business of the governing body should be taken care of at regular meetings. State statutes establish the procedure for calling special meetings which varies according to class size and form of government.

Adjourned Meetings. An adjourned meeting is simply a continuation of a regular or special meeting which was adjourned to a fixed time. If it is impossible for the governing body to complete all of its business within the allotted time, it is acceptable to move to adjourn the meeting to a specified later time and place. It is not advisable for a council or commission to adjourn to reconvene at "the call of the mayor." When a quorum of the council or commission reconvenes, it takes up the business where it left off.

Work Sessions. KOMA clearly covers work sessions, council subcommittee meetings, and informal meetings before and after the regular meeting, as well as meetings with organizations and interest groups. However, there is no KOMA violation when members of a governing body attend and participate in meetings of the League of Kansas Municipalities and similar conferences and programs, so long as members do not use these occasions to discuss specific business or affairs of the body.

Other Gatherings. Even gatherings of a majority of a quorum of a governing body with a neighborhood organization, for example, may constitute meetings subject to KOMA when the purpose of the gathering is the discussion of issues of concern to the governing body. Intergovernmental meetings come under the scope of KOMA when a majority of a quorum of any one or more governing bodies attends.

Chapter 2 Requirements

Except for discussions allowed in executive session pursuant to K.S.A. 75-4319 (See Chapter 3), all meetings within the scope of KOMA (See chapter 1) must be open to the public, proper notice must be given, and no secret ballots may be utilized. Even informal gatherings of the covered entity must meet KOMA requirements. *Coggins v. Public Employee Relations Board*, 2 K.A.2d 416, 423 (1978).

A. Meetings Open to the Public

"...all meetings for the conduct of the affairs of, and the transaction of business...shall be open to the public and no binding action by such bodies shall be by secret ballot..."

K.S.A. 75-4318(a)

The key to the requirement of open meetings is the accessibility of the public. The citizenry has a vested interest in observing the workings of government and the expenditure of public funds. To this end, it is vital that public entities strive to achieve the maximum citizen participation in their decision making. Moreover, a good working relationship with the citizenry can go a long way to countering the image of government as a behind-closed-door operation.

Location. Clearly, any attempt to hold a public meeting in a place not accessible to the general public for the purpose of limiting public scrutiny would be a KOMA violation. KOMA does not require, however, that all meetings of a city governing body be held in city hall. It is up to the governing body to use common sense to determine a location which is appropriate for an open meeting. As guidance, the Kansas Court of Appeals made the following observation: "...if a meeting is at such an inconvenient location or in a room so small as to make it inaccessible for public attendance, the meeting might effectively be considered improperly closed under the KOMA." *Stevens v. City of Hutchinson*, 11 K.A.2d 290, 292 (1986).

Governing bodies should also be cognizant of the accessibility of meeting locations for disabled citizens. The Americans With Disabilities Act, 42 U.S.C. § 12101 *et seq.*, requires that "...no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be

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denied the benefits of the services, programs, or activities of a public entity.”
42 U.S.C. § 12132.

Recording the Meetings. The use of recording devices may not be prohibited during an open public meeting.

“The use of cameras, photographic lights and recording devices shall not be prohibited at any meeting...but such use shall be subject to reasonable rules designed to insure the orderly conduct of the proceedings at such meeting.” K.S.A. 75-4318(e)

Reasonable rules governing the use of recording devices include specifying the location of the equipment and insuring that the equipment is not creating a disturbance that interferes with the meeting. If the governing body records the meeting in any fashion and then maintains it, the recording is subject to the Kansas Open Records Act (K.S.A. 45-215 *et seq.*).

B. Notice

“Notice of the date, time and place of any regular or special meeting of a public body...shall be furnished to any person requesting such notice...” K.S.A. 75-4318(b)

Type of Notice Required. KOMA requires only that the date, time and place of the meeting be furnished. The method of providing notice is not specified.

Myth: Notice of special meetings must be published in official city newspaper.

Fact: Notice may be furnished in whatever manner the governing body directs.

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It is not necessary that the notice be in writing or that the notice be within any particular time frame (except in commission cities of the 2nd class). When deciding when to call a meeting, common sense should prevail. For example, if the water tower has collapsed, the governing body may call a special meeting almost immediately and should do their best to inform those who have requested to be notified of meetings. However, if the topic is one that can easily be handled within a longer period of time, a date and time should be chosen which would allow for more notification to those who have requested it. The duty to provide this notice falls on the presiding officer or other person calling the meeting. K.S.A. 75-4318(c).

Myth: At least two hours notice must be given before calling a special meeting of a city governing body.

Fact: This requirement exists only for commission cities of the 2nd class pursuant to K.S.A. 14-1403. There is no statutory time requirement for other cities.

Individual Notice Must be Provided. KOMA only requires that notice be provided to those who have requested it. Some cities maintain a list of those who have requested notice of governing body meetings and simply mail the notice to those on the list as a matter of routine. Although not required by KOMA, publishing notice of regularly scheduled and special meetings is a laudable practice.

General publication in the newspaper is not sufficient notice under KOMA. Each person **who requests** it must be provided individual notice of regular and special meetings. If notice is requested by a petition, the petition must designate one person to receive the notice on behalf of all persons named in the petition. K.S.A. 75-4318(b)(1). Giving notice to an executive officer of an employees' organization or trade association is sufficient notice to the entire membership of the organization. K.S.A. 75-4318(b)(2).

The public body may require individuals to renew their request for notice on an annual basis. K.S.A. 75-4318(b)(3). However, prior to discontinuing the notice, the individual must be notified that it is necessary to resubmit the request. K.S.A. 75-4318(b)(3).

Adjourned Meetings. KOMA does not require that additional notice be provided for meetings which are adjourned, to continue at a specified date, time, and place. KOMA states only that meetings may not be adjourned "in

order to subvert the policy of open public meetings.” K.S.A. 75-4317(b). The adjourned meeting is a continuation of the original meeting for which notice was provided, and KOMA does not specifically require that notice be provided more than once for the same meeting. Further, notice is provided to the public when the date, time, and place of the continuation of the meeting is specified during an open meeting.

Example:

A council meeting is running very late into the evening and a significant amount of business remains unfinished. The governing body may adjourn the meeting to a specified date, time, and place and continue the meeting without providing **additional** notice of the meeting.

Agendas and Agenda Packets. KOMA does not require that an agenda be prepared prior to any public meeting. *Unified School District No. 407 v. Fisk*, 232 Kan. 820 (1983). Nor does it require that an agenda which is prepared be published. *Id.* However, any agenda which is prepared must be made available to those who request it pursuant to K.S.A. 75-4318(d) and must include all topics of discussion decided in advance. *Stevens v. City of Hutchinson*, 11 K.A.2d 290, 293 (1986). The agenda may be amended during the meeting. *Unified School District No.407 v. Fisk*, 232 Kan. 820 (1983).

For cities that provide “agenda packets” to governing body members, such packets should also be made available to those who request it. To help minimize the cost of copying such packets, it is recommend that the agenda packets be put online if possible so that members of the public may review the packet electronically or print it on their own if they wish. It is not recommended that local governments charge for providing citizens or the news media with copies of the agenda or agenda packets.

C. Secret Ballots

Secret Ballots. KOMA specifically prohibits the use of secret ballots. K.S.A. 75-4318(a). Because of this prohibition, any action taken to bind a public entity must be taken in an open public meeting. Secret ballots should be distinguished from the practice of “polling” the governing body. Outside of an

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actual meeting, governing body members may be contacted to see how they feel about a particular issue. As long as the poll does not involve a majority of a quorum of the body discussing the issue with one another, there is no meeting, and no KOMA violation.

Research Tool. The Attorney General has issued the following opinions on the requirements of KOMA:

- | | | |
|--------|--------|--------|
| 80-148 | 81-268 | 86-176 |
| 81-15 | 82-133 | 89-42 |
| 81-22 | 82-141 | 92-132 |
| 81-106 | 83-125 | 93-113 |
| 81-137 | 83-173 | 95-112 |
| 81-206 | 86-133 | 96-14 |
| 81-258 | 86-153 | |

Chapter 3 Executive Session

KOMA allows for closed meetings (a.k.a. executive sessions) in very limited circumstances. While no binding action can be taken during a closed meeting, executive sessions can be a useful tool for discussing topics while protecting important privacy interests. A valid use of executive sessions requires that the subject matter be one of the specified topics in K.S.A. 75-4319(b) and that proper procedure be used.

On occasion the body will need to discuss both exempt and nonexempt subjects. The Kansas Court of Appeals has opined that "if segregation of exempt and nonexempt topics would make a coherent discussion impossible, then it may be reasonable to close an entire meeting." *State v. U.S.D. No. 305*, 13 K.A.2d 117, 120 (1988).

A. Subject Matter

"No subjects shall be discussed at any closed or executive meeting, except the following:..." K.S.A. 75-4319(b)

(1) Personnel matters of nonelected personnel;

The primary purpose of this exemption is to protect the privacy of public employees, save personal reputations, and encourage qualified people to remain in government employ. *State v. U.S.D. No. 305*, 13 K.A.2d 117, 119 (1988). Most states with a similar open meetings law allow for closed meetings when dealing with issues of hiring, firing, compensation, and discipline of public employees. See Deanell R. Tacha, *The Kansas Open Meeting Act: Sunshine on the Sunflower State?*, 25 Kan. L. Rev. 169, 195 (1977). It is important to note that binding action regarding an employee, including setting salaries, hiring, and firing, must be done in open session. Because the protection of individual privacy is the purpose of the exception, executive session may not be used when discussing general personnel issues.

Example:

The question of whether to establish a citywide pay plan is a general personnel issue and may not be discussed in executive session. However, the evaluation of a particular employee does fall within the exception and executive session should be used to discuss the issue.

The Kansas Court of Appeals has opined that discussion by a school board whether to nonrenew the contract of a tenured teacher is within the exception and may be discussed in a closed session. *Carl O'Hair v. U.S.D. No. 300*, 15 K.A.2d 52, 66 (1990). Further, this exception also allows **prospective** employees to be interviewed and their potential employment discussed in an executive session. This exception does not, however, grant a privacy right to a school board itself. In *Walker v. U.S.D. 499*, 21 Kan. App. 2d 341, 900 P.2d 850 (1995), a hearing committee did not allow a former teacher to question board members regarding discussions while in executive session relating to her employment. The Court of Appeals held the hearing committee denied the teacher her procedural due process by not allowing her to question the board members about what was said in executive session.

Determining whether a particular individual is "personnel" must be done on a case-by-case basis. Although the term is not specifically defined by KOMA, "personnel" is generally held to be synonymous with "employees." Under this interpretation, the KOMA exception is consistent with the Kansas Open Records Act which provides that the records of public employees are private and generally do not have to be disclosed. K.S.A. 45-221(4). A recent Attorney General Opinion determined that the municipal court judge in the City of Emporia is not "personnel" within the meaning of KOMA and that this exception may not be used to discuss candidates for that position. See Attorney General Opinion 2002-28.

Matters pertaining to elected officials must be discussed in an open meeting. All employees of cities, counties, and other entities covered by KOMA are considered personnel and may therefore be discussed in executive session. Some nonelected officers (e.g., police chief, city clerk, city treasurer) are also employees of the public body and should be discussed in executive session as personnel. See McQuillin, *Municipal Corporations*, 3rd edition revised, "Elections, Officers and Employees", § 12.30 (1990).

Because volunteers who serve on appointed boards and commissions are not employees, their appointments may not be discussed in executive session. Further, independent contractors also are not considered employees and may not be discussed in executive session.

- (2) Consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;

In order to use this exception, the attorney(s) who are representing the governing body must be present, either in person or via conference call, and the communication involved must be of a privileged nature. One example would be when the governing body is discussing strategy for pending litigation involving the body. The mere fact that the attorney is present during the executive session does not automatically render all conversations protected by the attorney-client privilege. See *Hindsdale v. City of Liberal*, 961 F.Supp. 1490 (1997).

Because this exception can only be used when the communication involved is privileged in the attorney-client relationship, caution should be used when allowing persons other than the governing body and the attorney to be present during executive session called under this provision. If a third party is present during these discussions, the attorney-client privilege may be waived.

- (3) Matters relating to employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency;

This exception encompasses discussions involving labor negotiations and is commonly listed in other state laws as an appropriate topic for discussion in executive session. Deanell R. Tacha, *The Kansas Open Meeting Act: Sunshine on the Sunflower State?*, 25 Kan. L. Rev. 169, 194 (1977). The purpose of this exception to the open meetings requirement is that it "...prevents the private employee group from gaining any negotiating advantage over the public agency employer." *Id.* at 194.

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

In determining whether it is appropriate to use this exception in a particular situation, the key question to ask is whether the information involved is of a confidential nature. For example, the Kansas Court of Appeals opined that the Kansas Corporation Commission should have used executive session to discuss information consisting of specific numerical data as to Southwestern Bell's customers and equipment together with projections of costs, prices, and introduction dates of new equipment. *Southwestern Bell Telephone Co. v. Kansas Corporation Commission*, 6 K.A.2d 444, 457-459 (1981).

Questions concerning this exception often arise in the context of economic development and the discussion of financial incentives and local salary structure when trying to encourage a particular company to locate in your

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community. This question must be addressed on a case-by-case basis, but as a general rule, these issues can be discussed in executive session only when they involve confidential data or trade secrets of the private company. If the information involved in the discussions has been made public, the protection of executive session is not needed and the discussions must take place in an open meeting.

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

This exception reflects the strong privacy interest that has been established with regard to medical records and student records.

- (6) Preliminary discussions relating to the acquisition of real property;

It is important to note that this exception only allows for discussion in executive session concerning the *acquisition* of real property. Discussions concerning the sale of public property must be done in an open meeting. When the purchase involves both real and personal property, the primary focus of the acquisition must be the real property in order use this exception.

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

This exception can be used to receive and discuss information received by the Racing Commission from the Kansas Bureau of Investigation on criminal history records. It also can be used to negotiate with licensees of or applicants for licensure by the Commission regarding any such information. K.S.A. 74-8804(p).

- (8) Matters permitted to be discussed in a closed or executive meeting pursuant to subsection (d)(1) of K.S.A. 38-1507 and amendments thereto or subsection (e) of K.S.A. 38-1508 and amendments thereto;

Records and reports concerning child abuse or neglect received by the department of social and rehabilitation services or a law enforcement agency may be presented in an executive session to a member of certain legislative committees when the member is carrying out official functions of the member's office.

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

This exception is allowed for discussions of the State Child Death Review Board.

- (10) Matters permitted to be discussed in a closed or executive meeting pursuant to subsection (e) of K.S.A. 44-596 and amendments thereto;

Executive session may be used when the Workers Compensation Advisory Council is meeting with members representing employers or employees to separately discuss matters being studied by the council.

- (11) Matters permitted to be discussed in a closed or executive meeting pursuant to subsection (g) of K.S.A. 1995 Supp. 39-7,119 and amendments thereto;

The Medicaid Drug Utilization Review Board may use executive session when considering matters relating to identifiable patients or providers.

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

This exception only applies to negotiations between the state and tribes involving gaming compacts.

- (13) Matters relating to security measures, if the discussion of such matters at an open meeting would jeopardize such security measures, that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; (C) a public body or agency, public building or facility or the information system of a public body or agency; or (D) private property or persons, if the matter is submitted to the agency for purposes of this paragraph. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments;

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Executive session may now be used to discuss security strategies generally. This includes security measures relating to public buildings and facilities as well as security plans to protect private property or persons. And confidential records or information relating to security measures discussed pursuant to this exception are not subject to subpoena or discovery in any administrative, criminal, or civil action. (2005 Kansas Session Laws, Chapter 126.)

- (14) Matters permitted to be discussed in a closed or executive meeting pursuant to subsection (f) of K.S.A. 65-525, and amendments thereto.

This exception allows for the discussion by legislative committees regarding certain child care facilities, maternity centers, or family day care homes.

Research Tool. The Attorney General has issued the following opinions on the topics which may be discussed by a public body in executive session:

81-22	87-10	89-92
81-39	87-91	92-51
82-130	87-169	92-56
84-50	88-25	96-61
86-162	88-148	2002-28

B. Procedure for Recessing Into Executive Session

KOMA provides a specific procedure for recessing into a closed session. In order to go into executive session, the body must first be in a validly called open meeting.

“Upon formal motion made, seconded, and carried, all bodies and agencies subject to this act may recess, but not adjourn, open meetings for closed or executive meetings.”
K.S.A. 75-4319(a)

After the executive session has been completed, the body must go back into the open meeting and either continue its business or adjourn the meeting.

Formal Motion. A member of the governing body must make a formal motion that the body recess into executive session. The motion must then be seconded and carried as any other motion (more affirmative votes than

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negative ones) prior to the recess. The content of the motion should follow these guidelines:

“...Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed or executive meeting and (3) the time and place at which the open meeting shall resume.” K.S.A. 75-4319(a)

There is no standard format for the motion to recess into executive session which will apply to all situations. Because the statutory language requires that the motion contain both the “justification” and the “subjects” to be discussed, the motion should include the statutory reason for recessing into executive session and a more specific description of the topic for discussion.

When drafting the motion, it is important to balance the technical requirements of the Act with the purpose of the exceptions designed to protect privacy interests. Thus, the motion should provide enough information to show that the body is adhering to KOMA requirements while not being so specific as to harm privacy interests.

Example:

“I move that the city council recess into executive session pursuant to the nonelected personnel matters exception in order to discuss a performance matter involving a city employee, the open meeting to resume in the city

In this example, the body has included:

- The statutory language which allows for the closed session (e.g., personnel exception)
- A more specific description (e.g., performance matter); and
- The time and place at which the open meeting will resume (e.g., 7:25 p.m. in the city council chamber)

The body has chosen not to give the name of the individual in order to protect the employee’s privacy. Because of the difficulty involved in drafting these motions, it is advisable to prepare the motion in advance. Having the motion in writing also will make it easier to meet the requirement that the motion be

reflected in its entirety in the minutes of the meeting and maintained as a permanent record. K.S.A. 75-4319(a).

While it is important to draft the motion carefully, a mere technical violation in the formation of the motion will not result in a KOMA violation if the body is in substantial compliance with the Act in other respects. K.S.A. 75-4320(a); *Olathe Hospital Foundation, Inc. v. Extendicare, Inc.*, 217 Kan. 546, 562 (1975).

Conducting the Executive Session. Discussion during executive session must be limited to those subjects specified in the motion. K.S.A. 75-4319(a). Commonly asked questions concerning executive session include the following:

- (1) **Who may attend?** It is up to the governing body to decide who should be involved in each executive session. However, all governing body members have an absolute right to be present during all open meetings and executive sessions. In order to protect the integrity of the session as a private one, it is advisable only to have the governing body and those persons who are absolutely necessary to the discussion in attendance. Some cities also require the clerk to attend in order to follow-up on any questions the governing body might have. Because a third party in attendance may impact the attorney-client privilege, it is particularly important to limit those in attendance when conducting a session with your attorney.
- (2) **Should minutes be taken?** Absolutely not. Any official recording (written or otherwise) of the executive session becomes an open record which must be disclosed pursuant to the Kansas Open Records Act. K.S.A. 45-215 *et seq.* This would defeat the purpose of conduct a closed meeting.
- (3) **May we discuss more than one topic?** The motion to recess into executive session should utilize only one exception to KOMA as the justification for the closed meeting. However, if there are multiple subjects to be discussed within the same exception, they may be discussed during one closed session.

Example:

It is a valid use of executive session to recess pursuant to the personnel matters exception for the purpose of discussing the evaluation of ten individual employees of the city.

(3) **May we take a vote?** The statute provides:

"No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act." K.S.A. 75-4319(c).

This language allows the governing body to reach a consensus, but not to take action that binds the body. *O'Hair v. U.S.D. No. 300*, 15 K.A.2d 52, 67 (1990). As such, formal votes should be avoided during executive session and taken only during an open meeting.

(4) **How long may executive session last?** There is no time limit specified in KOMA. However, the governing body is limited by the time specified in the formal motion. If the business to be discussed in executive session is not concluded when the time to return to the open meeting is reached, the body must go back into the open meeting and pass a new motion for another executive session. If the body concludes the business being discussed in executive session prior to the time specified for the open meeting to resume, the body should wait until the specified time to resume its business.

Myth: Each executive session may last only 15 minutes.

Fact: Not true. The body is limited only by the time specified in the motion to recess.

(5) **Should executive session discussions remain confidential?** All persons attending executive sessions should be admonished that the purpose of the closed session is to protect important privacy interests and subjects discussed during these sessions should not be discussed outside of the session. Because of First Amendment guarantees of freedom of speech, it is impossible to specifically prohibit by ordinance an individual from discussing executive session topics in public. However,

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good governance requires that these sessions remain confidential if at all possible.

Research Tool. The Attorney General has issued the following opinions on procedural requirements of executive sessions under KOMA:

82-176	86-33	90-47
82-247	86-143	91-78
85-161	87-170	93-55

Chapter 4 Enforcement

KOMA contains its own enforcement mechanism and establishes the penalties that may be assessed for each violation. K.S.A. 75-4320 and 75-4320a. Jurisdiction for such cases has been conferred as follows:

“(a)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.” K.S.A. 75-4320a

“(e)Except as otherwise provided by law, proceedings arising under this section shall take precedence over all other cases and shall be assigned for hearing and trial at the earliest practicable date.” K.S.A. 75-4320a

Because KOMA did not create any constitutional rights, a suit involving a KOMA violation may not be brought in federal court based upon a federal question. *Boster v. Philpot*, 645 F. Supp. 798 (D. Kan. 1986). As with all other cases, a KOMA suit based upon diversity between the parties may be brought in federal court. 28 U.S.C. § 1332.

As a part of extensive changes made to the Kansas Open Records Act (KORA) during the 2000 Legislative Session, the Legislature granted the attorney general and county or district attorneys both subpoena power and the authority to serve interrogatories in investigating alleged violations of KOMA. K.S.A. 75-4320b.

During the 2005 Legislative Session, the Legislature established a new reporting requirement concerning KOMA complaints. On or before January 15 of each year, the county or district attorney of each county must report to the Attorney General all complaints received during the preceding year concerning violations of the Kansas Open Records Act and KOMA. The Attorney General shall compile this information and publish a yearly abstract of such information. (2005 Kansas Session Laws, Ch. 126)

A. Procedure

Bringing Suit. The Attorney General or the county/district attorney in the county in which the meeting was held may bring suit to seek injunction, mandamus, civil penalties, and seek avoidance of governmental action based on KOMA violations. K.S.A. 75-4320 and 75-4320a; *Stoldt v. City of Toronto*, 234 Kan. 957 (1984). Private individuals may bring suit to seek injunctive and mandamus relief only. *Id.* See also *City of Topeka v. Watertower Place Development Group*, 265 Kan. 148.

KOMA suits must be brought in the district court in the county in which the meeting was held and must be assigned for hearing and trial at the earliest practicable date, thus taking precedence over all other cases. K.S.A. 75-4320a. In order to seek the avoidance of binding action taken during the meeting, the attorney general or county/ district attorney must file the action within 10 days of the meeting. K.S.A. 75-4320(a). All actions for penalties based upon KOMA violations must be brought within one year. K.S.A. 60-514(c).

Burden of Proof. As with all cases, the attorney general or the county/district attorney must establish a *prima facie* case in order to bring suit for KOMA violations. This means that there must be sufficient evidence that the violation has occurred so that it is necessary for the body in question to present evidence to the contrary. Once the *prima facie* case has been established, the burden of proof shifts to the public body to show that it acted in compliance with KOMA requirements. K.S.A. 75-4320a(b). For this reason, it is important that public bodies maintain accurate minutes of their meetings, records of who was notified of such meetings, and all other pertinent information concerning the procedural aspects of the meetings.

The public body must demonstrate that it did not "knowingly violate" the requirements of KOMA or "intentionally fail" to furnish any information required by KOMA. The body "knowingly violates" the Act if it purposefully takes action prohibited by the Act or purposefully fails to take action required by the Act. *Murray v. Palmgren*, 231 Kan. 524 (1982). It is not a defense to claim that the body was unaware that the action was prohibited.

Bodies will generally not be penalized if there is a "technical" violation of the Act. In fact, the Act itself allows for some flexibility by providing penalties only when the meeting is not in "substantial compliance" with the Act. K.S.A. 75-4320(a). Courts will "overlook mere technical violations where the public body has made a good faith effort to comply and is in substantial compliance with the KOMA, and where no one is prejudiced or the public right to know has not been effectively denied." *Stevens v. Board of County Commissioners of Reno County*, 10 K.A.2d 523 (1985); *Stevens v. City of Hutchinson*, 11

K.A.2d 290 (1986). In both of the above-cited cases, there was no evidence that the public bodies had intentionally violated KOMA and no binding action was taken during the meeting where the technical violation occurred.

B. Penalties

Perhaps the most significant penalty involved when there has been a KOMA violation is the loss of the public trust. Indeed, even a mere investigation of a possible KOMA violation can create controversy in a community. Although rarely seen in such cases, there are a variety of possible legal ramifications for violation of KOMA and its requirements:

- Injunctions
- Mandamus
- Civil Penalties
- Court Costs
- Attorneys Fees
- Invalidation of Actions
- Removal from Office (ouster and recall)

Injunctions. An injunction is a tool used by courts to restrain persons from engaging in particular conduct. See *Unified School District No. 503 v. McKinney*, 236 Kan. 224 (1984). KOMA specifically authorizes the district court of the county in which the meeting is held to issue injunctions to enforce the Act. K.S.A. 75-4320a. The Attorney General, county attorney, or a private citizen may petition the court to issue such an order.

Mandamus. While injunctions are used to restrain the action of certain persons, mandamus is used to compel public officials to take some action. Courts may issue a writ of mandamus to compel a public officer to perform a clearly defined duty imposed by law and not involving the exercise of discretion. See *McMillen v. Unified School District No. 380*, 253 Kan. 259 (1993). Again, KOMA specifically authorizes the district court of the county in which the meeting is held to issue a writ of mandamus to enforce the Act. K.S.A. 75-4320a. The Attorney General, county attorney, or a private citizen may petition the court to issue such an order.

Civil Penalties. KOMA provides for civil penalties of up to \$500 for each violation of the Act. K.S.A. 75-4320(a). These penalties may be assessed against the individual or the agency who knowingly violates the Act or fails to furnish information as required by the Act. *Id.* If the civil penalties are sued for and recovered by the attorney general, the penalties are paid into the state general fund. K.S.A. 75-4320(b). If the penalties are sued for and

Kansas Open Meetings Act

recovered by a county or district attorney, the penalties are paid into the county general fund where the proceedings were instigated. *Id.*

Court Costs. In the event the court finds that the public entity violated the provisions of the Act, the court may award court costs to be paid to the person seeking to enforce the Act. K.S.A. 75-4320a(c). These court costs are assessed against the agency responsible for the violation and may not be assessed against individual members of the body. *Id.* If the public entity prevails in the action, court costs may be awarded to the body only if the court determines that the person bringing the action did so frivolously, not in good faith or without a reasonable basis in fact or law. K.S.A. 75-4320a(d).

Attorneys Fees. The cost of defending against a suit based upon a KOMA violation can be great. In most cases, the public body rather than the individual members of the body involved in the suit bears the burden of paying for an adequate defense.

Invalidation of Actions. As a general rule, individuals may sue only for injunction or mandamus and may not seek the invalidation of an action because of a violation of KOMA. *Krider v. Board of Trustees of Coffeyville Community College*, 277 Kan. 244 (2004). If the Attorney General or county or district attorney brings an action within 21 days of the meeting, the court may void any binding action taken at a meeting which was not in substantial compliance with the Act. K.S.A. 75-4320(a).

Removal from Office (ouster and recall). Perhaps the most significant penalty for KOMA violations is not found in the Act itself. Because KOMA violations are violations of state law, they can be used as grounds for ouster proceedings by a court (K.S.A. 25-4301) or recall proceedings by the citizenry (K.S.A. 60-1205). In fact, the Kansas Supreme Court has opined, "An allegation in a petition for recall that a public official willfully violated the Kansas Open Meetings Act is a legally sufficient claim of misconduct and may subject the public official to a recall election." *Unger v. Horn*, 240 Kan. 740, 743. Thus, a public official may be subject to recall for a violation of KOMA even if they are not charged and convicted of the violation.

Research Tool. The Attorney General has issued the following opinions on the enforcement of KOMA:

80-168

90-120

Appendix A

Increasing Quorum Requirements by Charter Ordinance

Increasing Quorum Requirements by Charter Ordinance

by Don Moler

A frequently asked question of the League of Kansas Municipalities concerns the ability of cities to increase their quorum requirements and thus allow two members of a governing body to speak to one another outside of an open meeting. Several cities, and at least one county in Kansas have taken this approach and we felt that we would provide a sample charter ordinance format for any other cities wishing to do this. As city officials in Kansas are well aware, the League and its member cities have tried for many years to get the state legislature to modify the "majority of a quorum" requirement in the Kansas Open Meetings Act to simply "a quorum." This is the case because cities cannot pass ordinances except with a vote of a majority of the councilmembers-elect or commissioners-elect. Thus, no ordinance could be passed unless a majority of the body voted "yes." For this reason, the League has felt for many years that the requirement that no two councilmembers can speak to one another outside of an open meeting, on a council or commission with five members, was an overly burdensome requirement and did not serve the public's best interest.

Observers of the legislature can reasonably conclude that it is not in the cards for the legislature to modify the "majority of a quorum" language in the Open Meetings Act anytime in the near future. Thus, the only legal way for a city with a five member council or commission to allow two members to talk to one another outside of an open meeting is to increase the quorum requirements. We are not advocating that your city take this action. We are simply providing the ordinance language should the city governing body decide it is in the best interests of the city to make this move.

The language in the accompanying charter ordinance was specifically written for a city of the third class with a mayor-council form of government and thus it charter ordinances K.S.A. 15-106. Modifications to this ordinance would be necessary for commission cities of the first, second or third class and for mayor-council cities of the first and second class. Specifically, cities of the third class with a commission form of government would need to charter ordinance K.S.A. 15-1409. Mayor-council cities of the second class would need to charter ordinance K.S.A. 14-111. Commission cities of the second class would need to charter ordinance K.S.A. 14-1308. Mayor-council cities of the first class would need to charter ordinance K.S.A. 13-1410. Finally, commission cities of the first class would need to specifically charter ordinance out from under the provisions of K.S.A. 13-1810 to modify the quorum requirements for the city commission.

Should any city have a question about the use or nature of this charter ordinance, please do not hesitate to contact the League. We will be more than happy to answer all of your questions regarding its use in your city.

CHARTER ORDINANCE No. _____

A CHARTER ORDINANCE EXEMPTING THE CITY OF _____, KANSAS,
FROM THE PROVISIONS OF K.S.A. 15-106, AND PROVIDING SUBSTITUTE
PROVISIONS ON THE SAME SUBJECT.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF _____:

Section 1. Exemption. The City of _____, by virtue of the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to and does exempt itself and make inapplicable to it K.S.A. 15-106 which applies to this city but does not apply uniformly to all cities.

Section 2. Regular and Special Meetings. Regular meetings of the council shall be held at such times as shall be prescribed by ordinance, but not less than once each month. Special meetings may be called by the mayor or acting mayor, on written request of any three members of the council, specifying the object and purpose of such meeting, which shall be read at the meeting and recorded in the journal of minutes of the meetings of the council. In all cases it shall require four of the five councilmembers elect to constitute a quorum to do business; but a smaller number may adjourn from day to day and may compel the attendance of absent members in such manner and under such penalties as the council, by ordinance, may have previously prescribed.

Section 3. Publication. This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

Section 4. Effective Date. This Charter Ordinance shall take effect 61 days after final publication unless a sufficient petition for a referendum is filed, requiring a referendum to be held on the ordinance as provided in Article 12, Section 5 of the Constitution of the State of Kansas, in which case this Charter Ordinance shall be come effective upon approval by a majority of the electors voting thereon.

Passed by the Governing Body, not less than two-thirds of the members-elect voting in favor thereof, this _____ day of _____, 199_____.

Mayor

ATTEST:

City Clerk

(SEAL)

Reprinted from the *Kansas Government Journal* (July, 1995)

Appendix B

Serial Communications and KOMA

The following is an excerpt from a paper presented at the Spring 1999 City Attorneys Meeting by Larry Kleeman, Assistant Legal Counsel for the League of Kansas Municipalities.

Attorney General Opinion 98-26: The Calling Tree Opinion of 1998 and its aftermath

A. AGO 98-26 and the Legislative Response

On April 20, 1998 the Attorney General had issued Opinion No. 98-26, discussing the application of the Kansas Open Meetings Act (KOMA) to a series of separate meetings that collectively involve a majority of a quorum of a public body. This opinion had been requested by the Montgomery County Attorney in response to some hypothetical "meeting" proposals by a community college board of trustees involved in a hiring process. The questions addressed ways in which a series of planned and deliberate discussions could be held which separately involved less than a majority of a quorum.

The response of the Attorney General set out in AGO 98-26 calls into question the "majority of a quorum" threshold contained in the Kansas Open Meetings Act (KOMA), K.S.A. 75-4317 et seq. In that opinion, the Attorney General concluded as follows:

"...a series of meetings, each of which involves less than a majority of a quorum of a public body, but collectively totaling a majority of a quorum, at which there is a common topic of discussion of the business or affairs of that body constitutes a meeting for purposes of the KOMA." (No. 98-26, p. 1).

The opinion specifically discusses a number of types of serial communications and concludes they violate KOMA based on the above principle, including: (1) Calling trees, in which groups of members constituting less than a majority of a quorum discuss a common issue and the chairman calls each member to "survey" their opinions before a formal vote was taken at the next meeting; (2) Meetings of groups of less than a majority of a quorum at different locations to discuss the same issue, with a staff person moving between the groups assisting with building a consensus; and (3) Communications by e-mail in which the mailed comments accumulate and are forwarded to other members, or the use of discussion boards or LISTSERV (TM) mechanisms in which members automatically receive messages posted by others and can comment on them.

A number of cities of the first and second class, including cities as small as Chetopa (1,243) and as large as Wichita (310,238) have governing bodies sufficiently large (7 - 11 members) that groups constituting less than a majority of a quorum can meet to discuss the business of the governing body without violating KOMA. In such cities it is common for the mayor or council president to survey members about their preliminary

opinions on issues. Small group conversations also occur involving different members of the body at different points in time. For example, on a 7-member council Member A and Member B may meet to discuss an item of city business since two members are less than a majority of a quorum (i.e., 3). If Member B then meets with Member C and communicates Member A's preliminary views on the same issue, the same reasoning in the Attorney General's opinion would indicate this constitutes a meeting of a majority of a quorum of the governing body.

Taken to its logical extreme, the opinion appeared to indicate that even ad hoc discussions among groups of elected officials that did not constitute a majority of a quorum could be grouped together to trigger the notice and public meeting requirements of the KOMA. Moreover, it gave strong indications that staff could also be an instrument of establishing a "serial" meeting although such contact would be "indirect".

The legislature itself, in fact, has a number of committees which are similar in size and in which identical issues could arise. For example, it is not uncommon for the chair or vice-chair (or ranking minority member) to engage in a series of meetings, each of which comprises less than a majority of a quorum of a committee, before a vote occurs on a critical issue. Opinion No. 98-36 seems to indicate that such serial communications would violate KOMA.

The Kansas Legislature (which was in session at the time the opinion was issued) was obviously concerned. Within weeks both houses acted to clarify several key issues. The outcome of discussions between both houses resulted in the following conference committee report:

Section 1. K.S.A. 75-4317a is hereby amended to read as follows: 75-4317a. (a) As used in this act,;

(a) "Meeting" means any gathering, assembly, telephone call or any other means of direct 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) "Meeting" shall not mean a series of gatherings, assemblies, telephone calls or any other means of direct interactive communication of the membership of the body or agency subject to this act where each gathering, assembly, telephone call or other means of direct interactive communication involves less than a majority of a quorum, but where collectively more than a majority of a quorum are involved unless the participants had the specific intention to avoid the requirements of K.S.A. 75-4318, and amendments, thereto.

This conference report was approved on May 3, 1998 by the Senate (22-18) and the House (75-47) and sent to the Governor. In its final form it appeared to preserve

indirect communications involving staff and require a specific intention to avoid the notice and open meeting requirements of KOMA when a series of small discussions occurred. Some local officials took comfort from this legislation, and still others felt it imposed additional burdens on local elected officials not already imposed by state law.

After passing this important bill, the legislature went home and what some may describe as a media "feeding frenzy" began. In newspaper after newspaper across the state, editorial writers denounced the measure as "gutting the open meetings act." Over the next few weeks wherever the Governor traveled he was greeted by editors who implored him to veto the bill. On May 15, 1998 he did veto it, indicating basic support for the Attorney General's opinion but acknowledging the confusion it had created. He pledged to seek clarification of the Opinion.

B. Governor Requests New Opinion

Governor Graves sent a letter to the Attorney General on June 5, 1998 in which he asked four questions to help clarify AGO 98-26:

1. What is the effect of the Kansas Supreme Court decision, *State ex rel. Stephan v. Board of Sedgwick County Commissioners*, 244 Kan. 536 (1989), on Attorney General Opinion No. 98-26?
2. Is the Open Meetings Act violated when a third party (such as a reporter or constituent), who is not acting at the direction of or at the request of a board member, communicates with a majority of the quorum of board members in a series of communications with individual members?
3. Is it appropriate for the presiding officer or staff member to contact other members of the board to determine which items to include on the agenda of the next meeting or to add items to an existing agenda for the next meeting?
4. Can a staff member brief all board members on an issue, elicit comments and discuss the board member's concerns about said issue, if the staff member does not discuss the board member's concerns and comments with other board members?

On June 19, 1998 the Attorney General's office invited the League to submit comment on the issues raised by the Governor's request. Since we were persuaded that the opinion seriously misconstrued the KOMA, as amended in 1994, we devoted considerable effort to researching and analyzing these issues. What follows are excerpts of our analysis sent to the Office of the Attorney General on July 15, 1998.

1. The League's Plain Language Argument

The plain language of K.S.A. 75-4317a demonstrates it applies only to contemporaneous types of communication:

75-4317a. Meeting defined. (a) As used in this act, "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.

The very structure of the listing of the activities that are eligible as "meetings" under this section emphasizes the contemporaneous nature of the communication involved. It is evident that any "gathering, assembly, or telephone call" would take place contemporaneously or in "real time." When the legislature added the term "or any other means of interactive communication" [emphasis supplied] as a final, catch-all description of activities that would be considered a "meeting" under the KOMA, it clearly intended similar contemporaneous interactions.

Even the dictionary definition relied on in Attorney General Opinion No. 98-26 to conclude that serial communications are "interactive" supports this view. In the definition of "interactive" cited therein [*Id.* at 3] as "mutually or reciprocally active", the terms "mutually" and "reciprocally" are simply adverbs which modify the term "active," a term which underscores the contemporaneous nature of such communications. The word "active" itself is defined in *The American Heritage Dictionary of the English Language* (Houghton Mifflin Co. 1976) as a state of being "in action; moving...in a state of action; not passive or quiescent."

Finally, if the phrase "any other interactive communication" in K.S.A. 75-4317a can be said to be ambiguous, it can be effectively construed using the well-recognized rule of statutory construction of *ejusdem generis*. Under this rule, when a series of specific terms in a statute are followed by a general phrase, the general phrase is held to apply only to persons or things of the same kind or class as those specifically mentioned. See *State Board of Nursing v. Ruebke*, 259 Kan. 599, 620 (1996). In other words, the phrase in question would be construed to apply to similar kinds of contemporaneous communications as those described specifically.

2. The League's Legislative Intent Argument: 1994 KOMA Amendment

K.S.A. 75-4317a was initially enacted in 1977 to provide a definition for the term "meeting" as it is used in the KOMA. In that form, it read as follows:

75-4317a. Meeting defined. As used in this act, "meeting" means any prearranged gathering or assembly 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. History: L. 1977, ch. 301, § 1; July 1.

From July 1, 1977 until April 7, 1994 (the effective date of 1994 HR 2784), this definition governed whether a particular gathering of public officials was covered by the KOMA. Under this definition the analysis was quite straightforward. Any ● prearranged

② gathering or assembly ③ by a majority of a quorum of a KOMA-covered body or agency ④ for the purpose of discussing the business or affairs of the body or agency triggered the requirements of the KOMA. During this time period the Attorney General (see Opinion No. 80-159) and many municipal attorneys, including those at the League of Kansas Municipalities, routinely advised public officials that the gathering or assembly requirement was met by a telephone call even though there was no physical presence.

On January 21, 1994 the Kansas Supreme Court handed down its decision in *State ex rel. Stephan v. Board of County Commissioners of Seward County, Id.*, revealing just how wrong these interpretations had in fact been. The Court held that telephone calls between two county commissioners did not constitute "meetings" under K.S.A. 75-4317a because a "gathering or assembly" required a physical presence which did not exist with a telephone call. *Id.* at 449. In reaching this conclusion, the Court relied heavily on legislative inaction in 1977 on SB 5 which would have included "electronic or written communication" within the scope of the KOMA. *Id.* at 450. Unlike the district court, the Court did not expressly address the failure of the telephone calls to be "prearranged" other than to observe "...the word "prearranged" has never been contained in K.S.A. 75-4317." *Id.* at 450.

The *Seward County* case sent shock waves through the Kansas Legislature which was in session at the time. Just as it did last year in response to AGO 98-26, the 1994 Legislature reacted quickly by holding hearings and eventually passing out HB 2784.

In the form in which HB 2784 arrived in the Senate Local Government Committee, it amended K.S.A. 75-4317a by adding the terms "telephone call, written communication or any other means of communication" as eligible "meetings" under the KOMA. During discussion of the bill in this form on February 10, 1994, the Chairman recommended making a number of changes, including removal of the "prearranged" requirement. The Committee minutes then reflect how the phrase "any other means of interactive communication" was inserted in place of the phrase "written communication" in response to a concern expressed by the League of Kansas Municipalities. The Senate Committee minutes of that date tell the story best:

Mr. Heim recalled the legislative testimony of Don Moler of the League of Kansas Municipalities with regard to Mr. Moler's thought that the Committee should carefully consider the intent of including "written communication." The question arose as to if the Legislature would want to define "meeting" as letters or memos. Sen. Gooch raised a question regarding the Mayor of a city sending a message to a city councilmember through the personal computer of the councilmember. He asked if this would be considered as a violation. Sen. Tillotson commented that perhaps if the press were sent the same message, it would not be a violation. After further discussion, the Chairman suggested striking "written communication" and inserting "any other means of interactive communication." Sen. Tillotson made a motion to so amend on lines 29

and 30 Sen. Langworthy seconded and the motion carried." (Emphasis in original).

The League's concern about the use of the term "written communication" in the House passed version of HB 2784 was based on our belief that it would have encompassed letters, memoranda, and other forms of delayed written communication that were not contemporaneous and had traditionally not been considered a "meeting" under the KOMA. The phrase "any other means of interactive communication" was substituted at the suggestion of the Chairman, Senator Mark Parkinson, in order to avoid such a result and in an attempt to include other means of contemporaneous communication (particularly electronic) which could be likened to telephone and face-to-face communication in terms of immediacy. From the context of the Committee's minutes, the legislature's intent with HB 2784 is clear: i.e., to apply the requirements of the KOMA to otherwise covered contemporaneous communications (written or unwritten, electronic or otherwise). **Furthermore there is no indication in the legislative history that HB 2784 was designed to prohibit serial communications.**

We are aware that this contemporaneous or "real time" requirement was explicitly rejected in Attorney General Opinion No. 98-26 (*Id.* at 3) based on the language of the 1994 amendment. We respectfully suggest, however, that the legislative history of HB 2784 would be persuasive evidence of the legislative intent of HB 2784. Similar evidence of legislative intent informed the Kansas Supreme Court's decision in the 1994 *Seward County* case when it construed the same section of the Kansas Statutes Annotated. There the Court pointed out that "[i]t is a fundamental rule of statutory construction, to which all other rules are subordinate, that the intent of the legislature governs if that intent can be ascertained" *Id.* at 448. Just recently in *Adams v. St. Francis Regional Medical Center*, 264 Kan. 144, 156 (1998), the Court restated its willingness to look beyond the bare language of a statute when it said, "[i]n determining legislative intent, courts are not limited to a mere consideration of the language used, but look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished, and the effect the statute may have under the various constructions suggested." (quoting *State v. Le*, 260 Kan. 845, Syl. ¶ 3 (1996)).

3. Summary of the League's Argument to the Attorney General

In summary, the events that led to the passage of the 1994 amendments to K.S.A. 75-4317a contained in HB 2784, and the recorded history of its enactment, strongly support the conclusion that the KOMA applies only to contemporaneous interactions of a majority of a quorum of a body or agency subject to the KOMA for the purpose of discussing the business or affairs of the body or agency. Further, the same legislative history and record are devoid of any indication that the 1994 amendments were designed to prohibit serial communications among less than a majority of a quorum of a body or agency subject to the act on a common subject which may collectively total a majority of a quorum. This conclusion is not in conflict with the basic conclusion of Opinion 98-26 that planned telephone calling trees, staff facilitated discussions, and even some e-mail or LISTSERV (TM) arrangements may constitute a

"meeting" under the KOMA if such discussions are contemporaneous and are done "knowingly" (see K.S.A. 75-4320(a)) to violate the provisions of the KOMA.

B. Responses to Specific Questions

1. What is the effect of Kansas Supreme Court decision, *State ex rel Stephan v. Board of Sedgwick County Commissioners*, 244 Kan. 536 (1989) on Attorney General Opinion No. 98-26?

State ex rel Stephan v. Board of Sedgwick County Commissioners involved a resolution to increase Sedgwick County's quorum requirement so that two members of the seven-member commission could communicate without implicating the KOMA. Finding that the Kansas Legislature chose language which turns on a numerical quorum requirement which is not specifically defined in the KOMA, the court upheld the validity of the resolution. In explaining its decision, the Court used the example of serial communications to demonstrate its point:

The State suggests that the quorum resolution at issue in the present case violates the Open Meetings Act by permitting two members of the county commission to meet outside the scope of the Act. Those two members could, in turn, individually speak with other members of the Board, thereby circumventing the provisions of the Open Meetings Act. The legislature, however, could have prevented this result by simply providing that the Open Meetings Act applies whenever two members of a governmental body or agency gather or assemble. Instead, it refused to adopt such an approach and defined a meeting simply as "a majority of a quorum," but did not define what constitutes a quorum.

Id. at 539.

The Supreme Court could not have been more clear. If the Kansas Legislature had intended to prohibit serial communications by its 1977 enactment defining what constituted a "meeting," it could simply have done so by removing the "majority of a quorum" language in K.S.A. 75-4317a and stating that any covered communications between any two members of the body or agency was a "meeting" for purposes of the KOMA. Clearly, in the *Sedgwick County* case the Kansas Supreme Court believed that the "majority of a quorum" requirement of K.S.A. 75-4317a was not satisfied by aggregating separate conversations between less than a majority of a quorum on the same subject.

As already explained, the text and the history of the 1994 amendments to K.S.A. 75-4317a in no way address serial communications. Most serial communications happen episodically and without a coordinated plan. The participants typically are not knowingly and deliberately working to avoid the requirements of the KOMA. Rather, they are doing it for the purpose of exchanging information on issues before the agency or body in a way that is wholly consistent with the purpose of the KOMA and the concept of informed government.

It seems clear that a series of episodic communications on a common subject involving in each communication less than a majority of a quorum of the body or agency that are not the result of an effort to knowingly avoid the requirements of the KOMA are still permissible under the Court's holding in *Sedgwick County*. In contrast, a planned series of contemporaneous communications on a common subject (such as the calling tree and staff-facilitated discussion examples in Opinion No.98-26) would appear to trigger the requirements of the KOMA if the other requirements of K.S.A. 75-4317a are met. And as has always been the case, unilateral communications among even a majority of a quorum would never trigger the requirements of the KOMA.

2. Is the Open Meetings Act violated when a third party (such as a reporter or constituent), who is not acting at the direction of or at the request of a board member, communicates with a majority of the quorum of board members in a series of communications with individual members?

No part of the KOMA would prohibit the conduct described in this question. The requirements of the KOMA do not in any way apply to communications involving persons who are not members of a body or agency covered by the KOMA. It applies only to the activities of "members" of a body or agency subject to the act. Finally, if the third party involved is not acting at the request or direction of each of the members participating in the contemporaneous serial discussions for the purpose of knowingly violating the KOMA, no violation of the KOMA can occur.

3. Is it appropriate for the presiding officer or staff member to contact other members of the board to determine which items to include on the agenda of the next meeting or to add items to an existing agenda for the next meeting?

As stated above, the requirements of the KOMA do not apply to communications of persons who are not members of a body or agency covered by the KOMA. To suggest otherwise would, in effect, place words in the statute which simply are not there. "When a statute is clear and unambiguous, the court must give effect to the legislative intent therein expressed rather than make a determination of what the law should or should not be." *State ex rel. Stephan v. Board of Seward County Commissioners, Id.* at 448. Therefore, staff members may clearly contact members for the purpose of planning the agenda or even discussing the business or affairs of the body or agency and be in full compliance with the KOMA.

With regard to the action of the presiding officer making contact for purposes of the agenda, a number of considerations come into play. First, if the presiding officer is not counted in determining the quorum (e.g., mayor in mayor-council city), there is no possibility of a violation. Second, it is reasonable to say that communication concerning the agenda is not "for the purpose of discussing the business or affairs of the body or agency," but it is for the purpose of "planning" the public discussion of such matters. Finally, K.S.A. 75-4320 requires that the contact be made knowingly to violate the KOMA. If this is not the case, no violation can be said to have occurred. In any case,

as explained above, any series of communications would have to be contemporaneous in order to be "interactive" as that term is used in K.S.A. 75-4317a.

4. Can a staff member brief all board members on an issue, elicit comments and discuss the board member's concerns about said issue, if the staff member does not discuss the board member's concerns and comments with other board members?

Yes. Staff members frequently serve as a helpful conduit for questions, concerns, and the movement of other general information among members of a body or agency covered by the requirements of the KOMA. Staff may provide governing body members with information on issues, elicit comments and discuss the members' concerns about issues before the body or agency in order to ensure members are fully briefed and an issue is ready for action by the governing body. Such discussions with individual members of the body or agency of a common issue that do not in any single session involve a majority of a quorum do not violate the KOMA so long as the staff member is not serving as a direct means of contemporaneous discussion of other members' comments and concerns. Ultimately these questions may be answered by examining the degree of staff involvement in acting as a conduit for members' views. There is fundamentally no distinction between this fact pattern and the one in Question No. 2 in which a reporter or constituent discusses an issue with members of a governing body. None of these events constitute "interactive communication" by a majority of a quorum of a governing body unless the communications are contemporaneous and are held knowingly to violate the KOMA.

Appendix C

Kansas Open Meetings Act K.S.A. 75-4317 et seq.

75-4317

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 43.--PUBLIC OFFICERS AND EMPLOYEES

75-4317. Open meetings declared policy of state; citation of act. (a) In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public.

(b) It is declared hereby to be against the public policy of this state for any such meeting to be adjourned to another time or place in order to subvert the policy of open public meetings as pronounced in subsection (a).

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

History: L. 1972, ch. 319, § 1; L. 1975, ch. 455, § 1; L. 1999, ch. 96, § 1; July 1.

75-4317a

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 43.--PUBLIC OFFICERS AND EMPLOYEES

75-4317a. Meeting defined. (a) As used in this act, "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.

History: L. 1977, ch. 301, § 1; L. 1994, ch. 64, § 1; April 7.

75-4318

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 43.--PUBLIC OFFICERS AND EMPLOYEES

75-4318. Meetings of state and subdivisions open to public; exceptions; secret ballots; notice; agenda, cameras, photographic lights, recording devices. (a) Subject to the provisions of subsection (f), 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, subcommittees 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. Meetings of task forces, advisory committees or subcommittees of advisory committees created pursuant to a governor's executive order shall be open to the public in accordance with this act.

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

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

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

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

(f) The provisions of the open meetings law shall not apply:

(1) To any administrative body that is authorized by law to exercise quasi-judicial functions when such body is deliberating matters relating to a decision involving such quasi-judicial functions;

(2) to the parole board when conducting parole hearings or parole violation hearings held at a correctional institution;

(3) 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; and

(4) if otherwise provided by state or federal law or by rules of the Kansas senate or house of representatives.

History: L. 1972, ch. 319, § 2; L. 1975, ch. 455, § 2; L. 1977, ch. 301, § 2; L. 1978, ch. 361, § 1; L. 1985, ch. 284, § 1; L. 2001, ch. 122, § 1; L. 2002, ch. 162, § 1; July 1.

75-4319

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 43.--PUBLIC OFFICERS AND EMPLOYEES

75-4319. Closed or executive meetings; conditions; authorized subjects for discussion; binding action prohibited. (a) Upon formal motion made, seconded and carried, all bodies and agencies subject to the open meetings act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed or executive meeting and (3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

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

- (1) Personnel matters of nonelected personnel;
- (2) consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;
- (3) matters relating to employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency;
- (4) confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;
- (5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person;
- (6) preliminary discussions relating to the acquisition of real property;
- (7) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 74-8804 and amendments thereto;
- (8) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (d)(1) of K.S.A. 38-1507 and amendments thereto or subsection (e) of

K.S.A. 38-1508 and amendments thereto;

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

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

(11) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (g) of K.S.A. 39-7,119 and amendments thereto;

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

(13) matters relating to security measures, if the discussion of such matters at an open meeting would jeopardize such security measures, that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; (C) a public body or agency, public building or facility or the information system of a public body or agency; or (D) private property or persons, if the matter is submitted to the agency for purposes of this paragraph. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments; and

(14) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (f) of K.S.A. 65-525, and amendments thereto.

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

(d) Any confidential records or information relating to security measures provided or received under the provisions of subsection (b)(13), shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

History: L. 1972, ch. 319, § 3; L. 1977, ch. 301, § 3; L. 1981, ch. 344, § 1; L. 1988, ch. 315, § 4; L. 1992, ch. 318, § 9; L. 1993, ch. 286, § 75; L. 1994, ch. 254, § 3; L. 1996, ch. 256, § 23; L. 1999, ch. 96, § 2; L. 2001, ch. 190, § 2; L. 2004, ch. 177, § 2; July 1. [Also includes changes from the 2005 Kansas Session Laws, Ch. 126]

75-4320

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 43.--PUBLIC OFFICERS AND EMPLOYEES

75-4320. Penalties. (a) Any member of a body or agency subject to this act who knowingly violates any of the provisions of this act or who intentionally fails to furnish information as required by subsection (b) of K.S.A. 75-4318, 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 \$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 21 days of the meeting, and the court shall have jurisdiction to issue injunctions or writs of mandamus to enforce the provisions of this act.

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

History: L. 1972, ch. 319, § 4; L. 1977, ch. 301, § 4; L. 2004, ch. 177, § 3; July 1.

75-4320a

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 43.--PUBLIC OFFICERS AND EMPLOYEES

75-4320a. Enforcement of act by district courts; burden of proof; court costs; precedence of cases. (a) 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, the court may award court costs to the person seeking to enforce the provisions of K.S.A. 75-4318 or 75-4319, and amendments thereto, if the court finds that the provisions of those statutes were violated. The award shall be assessed against the public agency or body responsible for the violation.

(d) In any action hereunder in which the defendant is the prevailing party, the court may award to the defendant court costs if the court finds that the plaintiff maintained the

action frivolously, not in good faith or without a reasonable basis in fact or law.

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

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

History: L. 1981, ch. 344, § 2; July 1.

75-4320b

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 43.--PUBLIC OFFICERS AND EMPLOYEES

75-4320b. Investigation of alleged violations; powers. In investigating alleged violations of the Kansas open meetings act, the attorney general or county or district attorney may:

- (a) Subpoena witnesses, evidence, documents or other material;
- (b) take testimony under oath;
- (c) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violations;
- (d) require attendance during such examination of documentary material and take testimony under oath or acknowledgment in respect of any such documentary material; and
- (e) serve interrogatories.

History: L. 2000, ch. 156, § 7; July 1.

75-4320c

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 43.--PUBLIC OFFICERS AND EMPLOYEES

75-4320c. Sunflower Foundation: Health Care for Kansas; subject to open meetings law. The Sunflower Foundation: Health Care for Kansas, established pursuant to the settlement agreement entered into by the attorney general in the action filed by Blue Cross and Blue Shield of Kansas, Inc., in the district court of Shawnee county, Kansas, case no. 97CV608, shall be and is hereby deemed to be a public body and shall be subject to the open meetings law.

History: L. 2001, ch. 122, § 3; April 26.



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Written Testimony
SB 410
Submitted to the Senate Committee on Elections and Local Government
Feb. 2, 2006
Randy Brown, Executive Director
Kansas Sunshine Coalition for Open Government

Thanks for allowing the Kansas Sunshine Coalition to offer written testimony today in support of SB 410. The Coalition is a group of educators, journalists and other citizens that includes the Kansas Professional Chapter of the Society of Professional Journalists, the Kansas Press Association, the Kansas Association of Broadcasters and the Elliott School of Communication at Wichita State University, at which I am the Senior Fellow.

SB 410, which would establish training programs on the Kansas Open Meetings Act (KOMA) and the Kansas Open Records Act (KORA), is an important yet simple way to improve the citizens' access to their government and to improve relations between citizens and government officials. It will do that by increasing the educational level on open government of public officials, who can, in turn, educate the people they serve.

All of the recent evidence – though not yet scientifically studied – indicates that two things are happening in Kansas, and they are directly related:

- 1.) More citizens, trying to access public records to which they are entitled, are being turned away – or are subjected to questions about why they are making their requests, which also is a violation of KORA.
- 2.) Many, if not most, of these violations are not the result of malice. They are the result of public officials simply not knowing the law.

SB 410 can help solve this effect-cause problem, as it has, for example, in the state of Texas. And the bill can be simply administered. When I recently spoke with one of your colleagues, he suggested that the required education could be offered on the Internet. The Coalition would be happy to help in the creation of such a course.

Thanks again for your time and consideration.

KANSAS SUNSHINE COALITION FOR OPEN GOVERNMENT

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Elections and Local Government
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Attachment 8