

CHAPTER 126
SENATE BILL No. 78

AN ACT concerning public information; relating to open records; relating to exceptions to the requirement of disclosure thereof; relating to open meetings; relating to public access to records; relating to documents filed by certain public employees; amending K.S.A. 45-217 and 45-229 and K.S.A. 2004 Supp. 45-221, 46-247, 66-1236 and 75-4319 and repealing the existing sections; also repealing K.S.A. 2004 Supp. 45-221g, 45-221h and 75-4319b.

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

Section 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 that~~ *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 individ-

ually 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 releasee, 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 secretary of state pursuant to subsection (b) of K.S.A. 2004 Supp. 44-1518, and amendments thereto, except when such information is required to be submitted in an application pursuant to K.S.A. 2004 Supp. 44-1520, and amendments thereto.~~

(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.*

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) ~~All~~ *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 reenact* ~~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 ~~June 1~~ *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.

Sec. 3. K.S.A. 2004 Supp. 66-1236 is hereby amended to read as follows: 66-1236. (a) In adopting procedures applicable in proceedings pursuant to K.S.A. 66-1233, and amendments thereto, the state corporation commission shall provide for:

(1) Confidentiality of information so that the amount of recovery requested, the amount of recovery allowed, the method of cost recovery requested and the method of cost recovery allowed is not disclosed;

(2) protective orders for all filings so that the citizens' utility ratepayer board may receive and review documents if the board intervenes;

(3) procedures to reflect rules of the United States nuclear regulatory commission or other regulatory bodies that govern the release of information and documentation which an applicant is required to submit to support the application or supply to the commission, commission staff or intervenors;

(4) the security cost recovery charge to be unidentifiable on customers' bills;

(5) the security cost recovery charge shall be allocated and added to all wholesale and retail rates and future contracts. Any contract existing on the effective date of this act, which does not specifically prohibit the addition of such charges, shall have such charges added;

(6) review of security-related filings in an expedited manner with reference only to security-related items to assure that the proposed items provide enhanced security;

(7) denial of any expenditure that the commission determines is not prudent or is not for security measures and approval of all other expenditures; and

(8) recovery of capital expenditures over a period equal to not more than ½ the usable lifetime of the capital investment.

(b) A determination by the commission of the prudence of an expenditure for security measures shall not be based on standard regulatory principles and methods of recovery and shall take fully into account the findings and intent of the legislature as stated in K.S.A. 2004 Supp. 66-1235, and amendments thereto.

(c) The provisions of this act and K.S.A. 66-1233, and amendments thereto, shall apply recovery of prudent expenditures for enhanced security incurred after September 11, 2001.

(d) *Any confidential records or information relating to security measures provided or received under the provisions of this act and K.S.A. 66-1233, and amendments thereto, shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.*

Sec. 4. K.S.A. 2004 Supp. 75-4319 is hereby amended to read as follows: 75-4319. (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 ~~(e)~~ (d)(1) of K.S.A. 38-1507 and amendments thereto or subsection ~~(f)~~ (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.*

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.

Sec. 6. K.S.A. 2004 Supp. 46-247 is hereby amended to read as follows: 46-247. The following individuals shall file written statements of substantial interests, as provided in K.S.A. 46-248 to 46-252, inclusive, and amendments thereto:

(a) Legislators and candidates for nomination or election to the legislature.

(b) Individuals holding an elected office in the executive branch of this state, and candidates for nomination or election to any such office.

(c) State officers, employees and members of boards, councils and commissions under the jurisdiction of the head of any state agency who are listed as designees by the head of a state agency pursuant to K.S.A. 46-285, and amendments thereto.

(d) Individuals whose appointment to office is subject to confirmation by the senate whether or not such individual is a state officer or employee.

(e) General counsels for state agencies irrespective of how compen-

sated.

(f) The administrator or executive director of the education commission of the states, the interstate compact on agricultural grain marketing, the Mo-Kan metropolitan development district and agency compact, the Kansas City area transportation district and authority compact, the mid-west nuclear compact, the central interstate low-level radioactive waste compact, the multistate tax compact, the Kansas-Oklahoma Arkansas river basin compact, the Kansas-Nebraska Big Blue river compact, and the multistate lottery.

(g) Private consultants under contract with any agency of the state of Kansas to evaluate bids for public contracts or to award public contracts.

(h) From and after January 1, 2003, any faculty member or other employee of a postsecondary educational institution as defined by K.S.A. 74-3201b, and amendments thereto, who provides consulting services and who, on behalf of or for the benefit of the person for which consulting services are provided:

(1) Promotes or opposes action or nonaction by any federal agency, any state agency as defined by K.S.A. 46-224, and amendments thereto, or any political subdivision of the state or any agency of such political subdivision or a representative of such state agency, political subdivision or agency; or

(2) promotes or opposes action or nonaction relating to the expenditure of public funds of the federal government, the state or political subdivision of the state or agency of the federal government, state or political subdivision of the state.

(i) *From and after January 1, 2006, any faculty member who receives an annual salary of \$50,000 or more, other than an adjunct faculty member, who is employed by a state education institution as defined by K.S.A. 76-711, and amendments thereto.*

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)~~ (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)~~ (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)~~ (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.

~~(g)~~ (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.

New Sec. 8. (a) Each not-for-profit entity that receives public funds in an aggregated amount of \$350 or more per year shall be required to document the receipt and expenditure of such funds. Subject to the provisions of subsection (b), each not-for-profit entity which receives public funds in an aggregated amount of \$350 or more per year, shall, upon request, make available to any requester a copy of documentation of the receipt and expenditure of such public funds received by such not-for-profit entity. If such not-for-profit entity's accounting practice does not segregate public funds from other fund sources, the not-for-profit entity's entire accounting of its expenditures and receipts shall be open to the public. The reporting requirements of this section shall commence on the first day of the fiscal year of such not-for-profit entity which occurs on or after July 1, 2005, and continue for each fiscal year thereafter.

(b) (1) Except as provided in paragraph (3), any not-for-profit entity that receives public funds that is required by law or the terms of a grant, contract or other agreement to file a written financial report which includes the receipt of public funds and the expenditure of such funds with an agency of the United States, an agency of this state or any political or taxing subdivision thereof, shall be deemed to have fulfilled the requirements of this section upon filing such report. Otherwise an itemized invoice or statement by the not-for-profit entity of the amount of public funds received and the expenditure therefor shall be deemed to have complied with the requirements of this section when such itemized invoice or statement is filed with an agency of the United States, an agency of this state or any political or taxing subdivision thereof, that provided the public funds to the not-for-profit entity.

(2) Any report referred to in paragraph (1) of this subsection, shall be deemed to be a public record of the agency of this state or any political or taxing subdivision thereof and subject to inspection or disclosure in accordance with the Kansas open records act.

(3) Any not-for-profit entity which receives public funds may file in the office of the secretary of state or make available for review in such not-for-profit entity's office, a copy of the detailed audit or accounting of public funds received by such not-for-profit entity.

(c) Each not-for-profit entity may charge and require advance payment of a reasonable fee for providing access to or furnishing copies of documentation of the receipt and expenditure of public funds as required by this section. Such fee shall be determined in the same manner as for a public agency pursuant to K.S.A. 45-219 and amendments thereto. A fee for copies of documentation of the receipt and expenditure of public funds which is equal to or less than \$.25 per page shall be deemed a reasonable fee.

(d) The provisions of this section shall not apply to any:

- (1) Health care provider;
- (2) individual person;
- (3) for profit corporation; or
- (4) partnership.

(e) For the purposes of this section: (1) "Health care provider" shall have the meaning ascribed to it in K.S.A. 65-4915 and amendments thereto. Health care provider shall also include any:

(A) Not-for-profit dental service corporation doing business in this state pursuant to K.S.A. 40-19a01 et seq. and amendments thereto;

(B) not-for-profit medical and hospital corporation doing business in this state pursuant to K.S.A. 40-19c01 et seq. and amendments thereto;

(C) indigent health care clinic as such term is defined in K.S.A. 75-6102 and amendments thereto; and

(D) adult care home as such term is defined in K.S.A. 39-923 and amendments thereto.

(2) "Public funds" means any moneys received from the United States, the state of Kansas or any political or taxing subdivision thereof, or any officer, board, commission or agency thereof.

Sec. 9. K.S.A. 45-217 and 45-229 and K.S.A. 2004 Supp. 45-221, 45-221g, 45-221h, 46-247, 66-1236, 75-4319 and 75-4319b are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 13, 2005.
