

To: House Judiciary Committee
From: John Goodyear, General Counsel
Date: February 3, 2024
RE: Testimony in Opposition to HB 2134

I want to thank Chairwoman Humphries and the members of the Committee for affording the League of Kansas Municipalities the opportunity to provide thoughts on HB 2134 today.

The League and our member cities support the transparencies guaranteed by the Open Records Act. We support the continued ability of local governments to assess reasonable fees for the provision of record and support current provisions in law that limit fees to the actual cost of furnishing records, to include the costs associated with review of the record and redaction. The costs to perform these reviews should be borne by the requester, not the local taxpayers. Because this legislation places an unnecessary and artificial limit on the ability to recoup actual costs, we stand in opposition to the bill.

Some of our member cities field hundreds of open records requests each year. Many of these requests are limited in their scope and the time required to fulfill them for one reason or another. When this is the case, the costs charged back to the requester are similarly limited and are often waived. These are not the situations that would be impacted by this bill.

Instead, the impact of this legislation will be felt when responding to those requests that require significant searches, significant review and redaction, and significant staff time (often from multiple employees). Cities work with these requesters to limit costs – they encourage them to refine the scope so that a request that preliminarily yields 15,000 pages can be more targeted for review to get the information that the person wants. They encourage them to take digital copies to save them on the cost of printing copies. But there are legitimate reasons for why extended staff time is needed – cities have a legal obligation to redact certain sensitive information to protect the privacy interests of employees and members of the public. This review must be thorough, and it should be done by an attorney with knowledge of the mandatory and discretionary exceptions to KORA. There are costs associated with this time – this bill, while well intentioned, could prevent cities from fully recovering these costs. This would shift the cost burden back to the city (and the taxpayer by extension).

As a final point, there is already a mechanism in law for challenging the costs assessed to requesters as unreasonable. Requesters can file complaints with the Attorney General and/or the county or district attorney. These offices are charged with enforcing KORA and have the expertise to determine whether the costs assessed by a public agency are reasonable. There is no need for creating a new administrative proceeding to be carried out by local governing bodies that rarely deal with KORA themselves as elected officials.

We are grateful for the opportunity to provide comments in opposition to HB 2134 and would ask that the Committee not recommend the bill favorably for passage.