



**STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL**

KRIS W. KOBACH
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

**Senate Judiciary Committee
Neutral Testimony for SB 70
Office of the Attorney General
February 3, 2025**

Chairwoman Warren and Members of the Committee,

The Office of the Attorney General is charged with enforcing the Kansas Open Records Act (KORA) and the Kansas Open Meetings Act (KOMA), as well as providing public education about both statutes. Our office is committed to promoting government transparency and accountability while ensuring that agencies and officials can still operate efficiently and effectively.

Senate Bill 70 proposes much-needed updates to KORA and KOMA. Both of these statutes were enacted in the 1980s and, as is the case with many laws passed in that era, they have struggled to keep pace with modern technological advances. In our increasingly digital world, the need for updates to these laws is clear. SB 70 represents a forward-thinking effort to address these challenges and enhance government transparency, while also balancing the interests of the public and the government's ability to function effectively.

One of the significant provisions of SB 70 is the differentiation between the reasonableness of fees for printed records and electronic records. Under the current law, K.S.A. 45-219 sets a flat rate of \$0.25 per page for records requests, regardless of whether those records are in paper or electronic form. This has led to inconsistencies in the treatment of electronic records, which often require far less time and cost to produce. SB 70 addresses this by proposing a reduced fee of \$0.125 per electronic page, reflecting the lower cost of providing records in electronic format. This change strikes a fair balance by ensuring that the cost of record retrieval reflects the technological reality while also maintaining appropriate compensation for the costs of managing and providing access to records. The Office of the Attorney General has already reduced our own per page rate to \$0.125 for electronic records.

We do recommend a minor amendment to this provision, specifically on line 23 of page 2, to clarify that the \$0.25 per page fee applies to "printed copies" to avoid any ambiguity in the final statute. This will ensure clear and consistent application of the fee structure and prevent confusion in the future.

Another important revision in SB 70 pertains to the amendment of K.S.A. 45-221(a)(11), which introduces an exception for records compiled during investigations of potential violations of civil law or

administrative rules. Specifically, this amendment would allow agencies to close records if an investigation has been formally closed and no violation was found. This change is significant for both government agencies and private businesses that cooperate with investigations but are concerned that their records may be released under an open records request even if no wrongdoing is found. By providing greater confidentiality to these records, the amendment encourages cooperation between businesses and government agencies, ultimately benefiting the enforcement of consumer protection and other laws.

While we support the intent of this change, we note that a narrower revision may also be available. Specifically, adding a Kansas Open Records Act (KORA) exemption clause to the Consumer Protection Act, may achieve the same result without the broad impact that the current proposal may have. We believe this could better target the issue while reducing the potential for unintended consequences.

The proposed revisions to K.S.A. 75-7d01 concerning the confidentiality of records held by the Batterer Intervention Program Certification Unit are another crucial aspect of SB 70. These records contain sensitive and graphic material and must be protected to ensure the safety and privacy of those participating in this domestic violence reeducation program. The revisions in this bill help close potential loopholes and enhance the confidentiality of such records, which is a critical step in safeguarding both the integrity of the program and the privacy of individuals. Many records associated with our agency's victims services offerings are already completely closed from public disclosure as a matter of law.

SB 70 also proposes a revision to the reporting deadline for county and district attorneys to report open government complaints from January 15 to December 15. While we support this change, we believe the deadline should be further adjusted to October 15, as this would allow the Office of the Attorney General more time to prepare a comprehensive annual report. This report is critical for the legislature to have up-to-date information at the start of the legislative session, ensuring informed decision-making on open government matters.

With regard to the Kansas Open Meetings Act, the proposed amendments to K.S.A. 75-4318 are particularly important. One revision clarifies that subdivisions of a governing body, such as committees, must still adhere to KOMA requirements. This amendment helps close a misunderstanding that has been exploited by some governing bodies to avoid public meeting requirements by dividing themselves into smaller groups. The clarification included in subsection (h) ensures public confidence that these smaller groups are still subject to KOMA when they are making decisions or conducting business on behalf of the larger body. We recommend a minor amendment to the language in subsection (h) on page 14 to add "of the subordinate group" between the words "membership" and "participated" to avoid any confusion regarding the application of this provision.

While we appreciate the addition of subsection (i) concerning when private entities are subject to KOMA, we believe that the continued use of the instrumentality analysis is a more effective method for determining the applicability of KOMA to such entities. Therefore, we respectfully request that subsection (i) be removed from the final version of the bill.

Another proposed change, subsection (j), addresses the broadcasting of public comments at local government meetings. While we understand the policy goals behind this provision, we recommend that

the language be redrafted to read: "The open portion of a public meeting shall be made accessible to the public whether broadcast, livestreamed, or attended in person." This revised wording aligns more closely with the terms and interpretations already established in our office's KOMA analysis, and we believe it will help avoid any confusion or challenges to the provision's enforcement.

Finally, the proposed change to K.S.A. 75-4319, which would allow a five-minute leeway for returning to open session following an executive session, offers more flexibility to governing bodies. While we acknowledge the intent behind this provision, we believe that additional statutory structure is necessary to ensure that the enforcement of this provision remains clear and consistent. We are happy to work with the committee to refine the language to achieve their intended goal.

In conclusion, SB 70 represents a positive step forward in updating the Kansas Open Records Act and the Kansas Open Meetings Act to meet the demands of the modern technological landscape. The bill makes important strides in promoting transparency and openness in government while ensuring that the public's right to access information is balanced with the need for confidentiality in certain contexts. The Office of the Attorney General supports this bill with the proposed amendments and looks forward to working with the committee to refine it further. Thank you for your time and consideration.

Sincerely,

Matt Bingesser
Administrative Counsel
Office of the Attorney General