

HOUSE BILL No. 2134

By Committee on Judiciary

Requested by Mike O'Neal on behalf of Kansas Policy Institute

1-28

1 AN ACT concerning the open records act; limiting certain charges for
2 copies of records by the state executive branch and other public
3 agencies excluding the legislative and judicial branch of state
4 government; amending K.S.A. 45-219 and repealing the existing
5 section.
6

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

8 Section 1. K.S.A. 45-219 is hereby amended to read as follows: 45-
9 219. (a) Any person may make abstracts or obtain copies of any public
10 record to which such person has access under this act. If copies are
11 requested, the public agency may require a written request and advance
12 payment of the prescribed fee. A public agency shall not be required to
13 provide copies of radio or recording tapes or discs, video tapes or films,
14 pictures, slides, graphics, illustrations or similar audio or visual items or
15 devices, unless such items or devices were shown or played to a public
16 meeting of the governing body thereof, ~~but~~ *except that* the public agency
17 shall not be required to provide such items or devices ~~which~~ *that* are
18 copyrighted by a person other than the public agency.

19 (b) Copies of public records shall be made while the records are in
20 the possession, custody and control of the custodian or a person designated
21 by the custodian and shall be made under the supervision of such
22 custodian or person. ~~When practical~~ *Whenever practicable*, copies shall be
23 made in the place where the records are kept. If it is ~~impractical~~ *not*
24 *practicable* to do so, the custodian shall allow arrangements to be made for
25 use of other facilities. If it is necessary to use other facilities for copying,
26 the cost thereof shall be paid by the person desiring a copy of the records.
27 In addition, the public agency may charge the same fee for the services
28 rendered in supervising the copying as for furnishing copies under
29 subsection (c) and may establish a reasonable schedule of times for
30 making copies at other facilities.

31 (c) Except as provided by subsection ~~(f)~~ **(h)** or where fees for
32 inspection or for copies of a public record are prescribed by statute, each
33 public agency may prescribe reasonable fees for providing access to or

1 furnishing copies of public records, subject to the following:

2 (1) In the case of fees for copies of records, the fees shall not exceed
3 the actual cost of furnishing ~~copies~~ **the requested records**, including the
4 cost of staff time required to make the information available. **Actual costs**
5 **may include the cost to review and redact the requested records but**
6 **shall not include incidental costs incurred by the public agency that**
7 **are not attributable to furnishing the requested records.**

8 (2) In the case of fees for providing access to records maintained on
9 computer facilities, the fees shall include only the cost of any computer
10 services, including staff time required.

11 (3) **If the public agency incurs costs for staff time to provide**
12 **access to or furnish copies of public records, the agency shall use in**
13 **good faith the lowest-cost category of staff reasonably necessary to**
14 **provide access to or furnish copies of public records. Charges for staff**
15 **time shall be based on the employee's salary or hourly wage. Charges**
16 **for staff time shall not include the costs of employee benefits.**

17 (4) *Upon request, a public agency shall provide to the person*
18 *requesting access to or copies of public records pursuant to this section*
19 *an itemized statement of costs incurred by the public agency and*
20 *charged to such requester. Such itemized statement shall include, but not*
21 *be limited to, the hourly rates charged for each employee involved in*
22 *making the requested records available and an itemized list of any other*
23 *fees charged to provide access to or furnish copies of the requested*
24 *records.*

25 (5) Fees for access to or copies of public records of public agencies
26 within the legislative branch of the state government shall be established in
27 accordance with K.S.A. 46-1207a, and amendments thereto, **and the**
28 **provisions of this section.**

29 ~~(4)(5)(6)~~ Fees for access to or copies of public records of public
30 agencies within the judicial branch of the state government shall be
31 established in accordance with rules of the supreme court **and the**
32 **provisions of this section.**

33 ~~(5)(6)(7)~~ Fees for access to or copies of public records of a public
34 agency within the executive branch of the state government *not described*
35 *in paragraph (3) or (4) shall be established by the agency head as follows:*

36 (A) *For printed copies of public records, a fee that is equal to \$.25*
37 *per page. No such fee shall be charged for electronic copies; or*

38 (B) *for the cost of employee time required to provide access to or*
39 *furnish copies of public records, a fee that shall not exceed the lowest*
40 *hourly rate of an employee qualified to provide the requested records plus*
41 *the actual cost of printing copies of public records. No such fee shall be*
42 *charged for electronic copies* **within the executive branch of the state**
43 **government shall be established in accordance with the provisions of**

1 **this section by the agency head.**

2 ~~(d)(+)~~ Any person requesting records *within the executive branch*
3 may appeal the reasonableness of the fees charged for providing access to
4 or furnishing copies of such records to the secretary of administration,
5 whose decision shall be final. ~~A fee for copies of public records which is~~
6 ~~equal to or less than \$.25 per page shall be deemed a reasonable fee.~~

7 ~~(2)—Any person requesting records of a political or taxing subdivision~~
8 ~~may appeal the reasonableness of the fees charged for providing access to~~
9 ~~or furnishing copies of such records to the governing body of such~~
10 ~~political or taxing subdivision, whose decision shall be final.~~

11 ~~(d)~~(e) **(1) When the staff time needed to respond to a records**
12 **request will exceed five hours or the estimated actual cost for staff**
13 **time needed to fill the request exceeds \$200, the public agency shall**
14 **make reasonable efforts to contact the requester and engage in**
15 **interactive communication about mitigating costs to fill the request.**
16 **The requester is not obligated to mitigate costs.**

17 **(2) If a public agency has made reasonable efforts to contact the**
18 **requester pursuant to this section and the requester has failed to**
19 **respond by the end of the third business day, the records request will**
20 **be deemed to be withdrawn until a subsequent contact has been made**
21 **by the requester to the public agency.**

22 **(3) As used in this subsection, "reasonable efforts to contact the**
23 **requester" means contacting the requester through the means of**
24 **communication that the requester provided to be used by the agency**
25 **to respond to the request.**

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

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

41 ~~(f)~~(g)(h) Any person who is a certified shorthand reporter may charge
42 fees for transcripts of such person's notes of judicial or administrative
43 proceedings in accordance with rates established pursuant to rules of the

1 Kansas supreme court.

2 ~~(g)~~**(i)** Nothing in the open records act shall require a public agency
3 to electronically make copies of public records by allowing a person to
4 obtain copies of a public record by inserting, connecting or otherwise
5 attaching an electronic device provided by such person to the computer or
6 other electronic device of the public agency.

7 Sec. 2. K.S.A. 45-219 is hereby repealed.

8 Sec. 3. This act shall take effect and be in force from and after its
9 publication in the statute book.