

HOUSE BILL No. 2102

By Committee on Judiciary

1-26

1 AN ACT concerning certain open records; relating to nondisclosure of
2 certain records; amending K.S.A. 2010 Supp. 45-221 and repealing
3 the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2010 Supp. 45-221 is hereby amended to read as
7 follows: 45-221. (a) Except to the extent disclosure is otherwise required
8 by law, a public agency shall not be required to disclose:

9 (1) Records the disclosure of which is specifically prohibited or
10 restricted by federal law, state statute or rule of the Kansas supreme court
11 or rule of the senate committee on confirmation oversight relating to
12 information submitted to the committee pursuant to K.S.A. 2010 Supp.
13 75-4315d, and amendments thereto, or the disclosure of which is
14 prohibited or restricted pursuant to specific authorization of federal law,
15 state statute or rule of the Kansas supreme court or rule of the senate
16 committee on confirmation oversight relating to information submitted to
17 the committee pursuant to K.S.A. 2010 Supp. 75-4315d, and amendments
18 thereto, to restrict or prohibit disclosure.

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

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

23 (4) Personnel records, performance ratings or individually
24 identifiable records pertaining to employees or applicants for
25 employment, except that this exemption shall not apply to the names,
26 positions, salaries or actual compensation employment contracts or
27 employment-related contracts or agreements and lengths of service of
28 officers and employees of public agencies once they are employed as
29 such.

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

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

36 (7) Library, archive and museum materials contributed by private

1 persons, to the extent of any limitations imposed as conditions of the
2 contribution.

3 (8) Information which would reveal the identity of an individual
4 who lawfully makes a donation to a public agency, if anonymity of the
5 donor is a condition of the donation, except if the donation is intended for
6 or restricted to providing remuneration or personal tangible benefit to a
7 named public officer or employee.

8 (9) Testing and examination materials, before the test or examination
9 is given or if it is to be given again, or records of individual test or
10 examination scores, other than records which show only passage or
11 failure and not specific scores.

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

17 (A) Is in the public interest;

18 (B) would not interfere with any prospective law enforcement
19 action, criminal investigation or prosecution;

20 (C) would not reveal the identity of any confidential source or
21 undercover agent;

22 (D) would not reveal confidential investigative techniques or
23 procedures not known to the general public;

24 (E) would not endanger the life or physical safety of any person; and

25 (F) would not reveal the name, address, phone number or any other
26 information which specifically and individually identifies the victim of
27 any sexual offense in article 35 of chapter 21 of the Kansas Statutes
28 Annotated, and amendments thereto.

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

33 (11) Records of agencies involved in administrative adjudication or
34 civil litigation, compiled in the process of detecting or investigating
35 violations of civil law or administrative rules and regulations, if
36 disclosure would interfere with a prospective administrative adjudication
37 or civil litigation or reveal the identity of a confidential source or
38 undercover agent.

39 (12) Records of emergency or security information or procedures of
40 a public agency, or plans, drawings, specifications or related information
41 for any building or facility which is used for purposes requiring security
42 measures in or around the building or facility or which is used for the
43 generation or transmission of power, water, fuels or communications, if

1 disclosure would jeopardize security of the public agency, building or
2 facility.

3 (13) The contents of appraisals or engineering or feasibility
4 estimates or evaluations made by or for a public agency relative to the
5 acquisition of property, prior to the award of formal contracts therefor.

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

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

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

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

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

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

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

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

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

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

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

- 1 of an open meeting; or
- 2 (B) distributed to a majority of a quorum of any body which has
3 authority to take action or make recommendations to the public agency
4 with regard to the matters to which such records pertain.
- 5 (22) Records of a public agency having legislative powers, which
6 records pertain to research prepared for one or more members of such
7 agency, except that this exemption shall not apply when such records are:
- 8 (A) Publicly cited or identified in an open meeting or in an agenda
9 of an open meeting; or
- 10 (B) distributed to a majority of a quorum of any body which has
11 authority to take action or make recommendations to the public agency
12 with regard to the matters to which such records pertain.
- 13 (23) Library patron and circulation records which pertain to
14 identifiable individuals.
- 15 (24) Records which are compiled for census or research purposes
16 and which pertain to identifiable individuals.
- 17 (25) Records which represent and constitute the work product of an
18 attorney.
- 19 (26) Records of a utility or other public service pertaining to
20 individually identifiable residential customers of the utility or service,
21 except that information concerning billings for specific individual
22 customers named by the requester shall be subject to disclosure as
23 provided by this act.
- 24 (27) Specifications for competitive bidding, until the specifications
25 are officially approved by the public agency.
- 26 (28) Sealed bids and related documents, until a bid is accepted or all
27 bids rejected.
- 28 (29) Correctional records pertaining to an identifiable inmate or
29 release, except that:
- 30 (A) The name; photograph and other identifying information;
31 sentence data; parole eligibility date; custody or supervision level;
32 disciplinary record; supervision violations; conditions of supervision,
33 excluding requirements pertaining to mental health or substance abuse
34 counseling; location of facility where incarcerated or location of parole
35 office maintaining supervision and address of a releasee whose crime was
36 committed after the effective date of this act shall be subject to disclosure
37 to any person other than another inmate or releasee, except that the
38 disclosure of the location of an inmate transferred to another state
39 pursuant to the interstate corrections compact shall be at the discretion of
40 the secretary of corrections;
- 41 (B) the ombudsman of corrections, the attorney general, law
42 enforcement agencies, counsel for the inmate to whom the record pertains
43 and any county or district attorney shall have access to correctional

1 records to the extent otherwise permitted by law;

2 (C) the information provided to the law enforcement agency
3 pursuant to the sex offender registration act, K.S.A. 22-4901 et seq., and
4 amendments thereto, shall be subject to disclosure to any person, except
5 that the name, address, telephone number or any other information which
6 specifically and individually identifies the victim of any offender required
7 to register as provided by the Kansas offender registration act, K.S.A. 22-
8 4901 et seq. and amendments thereto, shall not be disclosed; and

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

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

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

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

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

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

33 (35) Any report or record which is made pursuant to K.S.A. 65-
34 4922, 65-4923 or 65-4924, and amendments thereto, and which is
35 privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments
36 thereto.

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

39 (37) Any financial data or traffic information from a railroad
40 company, to a public agency, concerning the sale, lease or rehabilitation
41 of the railroad's property in Kansas.

42 (38) Risk-based capital reports, risk-based capital plans and
43 corrective orders including the working papers and the results of any

1 analysis filed with the commissioner of insurance in accordance with
2 K.S.A. 40-2c20 and 40-2d20, and amendments thereto.

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

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

8 (41) All financial analysis ratios and examination synopses
9 concerning insurance companies that are submitted to the commissioner
10 by the national association of insurance commissioners' insurance
11 regulatory information system.

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

14 (43) Market research, market plans, business plans and the terms and
15 conditions of managed care or other third party contracts, developed or
16 entered into by the university of Kansas medical center in the operation
17 and management of the university hospital which the chancellor of the
18 university of Kansas or the chancellor's designee determines would give
19 an unfair advantage to competitors of the university of Kansas medical
20 center.

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

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

40 (46) Any information or material received by the register of deeds of
41 a county from military discharge papers (DD Form 214). Such papers
42 shall be disclosed: To the military dischargee; to such dischargee's
43 immediate family members and lineal descendants; to such dischargee's

1 heirs, agents or assigns; to the licensed funeral director who has custody
2 of the body of the deceased dischargee; when required by a department or
3 agency of the federal or state government or a political subdivision
4 thereof; when the form is required to perfect the claim of military service
5 or honorable discharge or a claim of a dependent of the dischargee; and
6 upon the written approval of the commissioner of veterans affairs, to a
7 person conducting research.

8 (47) Information that would reveal the location of a shelter or a
9 safehouse or similar place where persons are provided protection from
10 abuse or the name, address, location or other contact information of
11 alleged victims of stalking, domestic violence or sexual assault.

12 (48) Policy information provided by an insurance carrier in
13 accordance with subsection (h)(1) of K.S.A. 44-532, and amendments
14 thereto. This exemption shall not be construed to preclude access to an
15 individual employer's record for the purpose of verification of insurance
16 coverage or to the department of labor for their business purposes.

17 (49) An individual's e-mail address, cell phone number and other
18 contact information which has been given to the public agency for the
19 purpose of public agency notifications or communications which are
20 widely distributed to the public. *This exception shall not include such*
21 *contact information used by the public agency to: (A) Promote or oppose*
22 *in any manner any action or nonaction by the legislature on any*
23 *legislative matter or the adopting or nonadopting of any rules and*
24 *regulations by any state agency; or (B) expressly advocate the*
25 *nomination, election or defeat of a clearly identified candidate.*

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

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

43 (d) If a public record contains material which is not subject to

1 disclosure pursuant to this act, the public agency shall separate or delete
2 such material and make available to the requester that material in the
3 public record which is subject to disclosure pursuant to this act. If a
4 public record is not subject to disclosure because it pertains to an
5 identifiable individual, the public agency shall delete the identifying
6 portions of the record and make available to the requester any remaining
7 portions which are subject to disclosure pursuant to this act, unless the
8 request is for a record pertaining to a specific individual or to such a
9 limited group of individuals that the individuals' identities are reasonably
10 ascertainable, the public agency shall not be required to disclose those
11 portions of the record which pertain to such individual or individuals.

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

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

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

25 Sec. 2. K.S.A. 2010 Supp. 45-221 is hereby repealed.

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

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