



Testimony to Senate Federal and State Affairs Committee

SB 10 – Kansas Open Records Act

March 13, 2013

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Chairman Ostmeyer and members of the Committee:

Thank you for your willingness to review the Kansas Open Records Act (KORA). I am testifying today in support of SB 10, but also as a strong supporter for making Kansas government more transparent and open.

To start, I believe that any expectation of transparency should extend to all levels of government within the state. From the building in which we are standing and the surrounding state agencies, to county and municipal governments, to the small taxing subdivision in rural Cherokee County. All levels of government should operate under the same presumption of openness. If something is good enough for municipal governments then it is good enough for the Kansas Legislature, and vice versa.

We routinely file open records requests, pursuant to KORA, of governmental entities across the state and all levels of government. As a result, we have experienced a wide array of issues related to these requests including the fees associated with securing records.

By way of example, last July we requested spending data from a Kansas school district; they had previously complied with a request for the same information. The district intended to charge us overtime rates to compile the information and ultimately settled on a bill of \$950.31 to provide a spreadsheet of payroll listings. Presumably, payroll data had already been compiled and should not have taken the 32 hours' worth of work the district indicated, let alone an expectation of employee overtime. After negotiating with the district in question we paid \$637 for the requested records.

The idea of negotiating for lower costs is not limited to our experience at Kansas Policy Institute. *The Kansas City Star* reported¹ that the American Civil Liberties Union was charged \$83 for records from the Kansas City Kansas police department, nothing by the City of Hutchinson, and \$11,000 by the City of Lenexa. The article further explained that the ACLU was negotiating for lower fees.

This begs the question, what about the people that do not have the wherewithal to negotiate for lower fees? KORA should be strengthened to account for these wide variations and put more power in the hands of Kansans. Also, given that a good portion of business is conducted online, I would strongly encourage the committee to waive "copying fees" for electronic documents.

I would also refer to rankings from a 2011 examination conducted by the State Integrity Investigationⁱⁱ – On this ranking Kansas scored a 47% on the question of “Is the right of access to information effective.” While Kansas does have an open records law, it can and should be strengthened.

Aside from the issue of fees, governments should not be allowed to offer a perfunctory “Your request will require more time,” to honor the current three day response requirement. If that is an appropriate initial response timeframe, then a secondary mandatory response with further clarification on fees, request/denial, etc. is even more appropriate.

Definitions and exemptions should be strengthened and clarified. For instance, current law discussed “highly offensive” information. Perhaps list that information as an exclusion, rather than in a category that has the potential to encompass additional information in the future. Administrative processes should be established for appealing a denial. Court proceedings should be the final step, not the primary source of appeal. For civil penalties for violations I would note that Illinois has a fine of \$5,000 for “knowing violations” of their law. The “knowing violation” is operative as it would insulate public servants inadvertent action and a higher fine would likely have more teeth than the current \$500 facing violations in Kansas.

SB 10 is a good step in keeping Kansas government accountable. This is not to say that government is not held to account, but more to suggest that it is the responsibility of all Kansans to demand openness and transparency from the governments they elect. Open records and open meetings laws are a vital tool of that responsibility and we should always seek to make that tool more effective and put more power in the hands of watchdog entities, journalists, and everyday Kansans.

ⁱ <http://joco913.com/news/johnson-county-district-attorney-says-public-business-is-too-often-private/>

ⁱⁱ http://www.stateintegrity.org/kansas_survey_public_access_to_information