

**SENATE BILL No. 397**

By Committee on Federal and State Affairs

2-3

---

1 AN ACT concerning the open records act; amending K.S.A. 2015 Supp.  
2 45-221 and repealing the existing section.

3  
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 2015 Supp. 45-221 is hereby amended to read as  
6 follows: 45-221. (a) Except to the extent disclosure is otherwise required  
7 by law, a public agency shall not be required to disclose:

8 (1) Records the disclosure of which is specifically prohibited or  
9 restricted by federal law, state statute or rule of the Kansas supreme court  
10 or rule of the senate committee on confirmation oversight relating to  
11 information submitted to the committee pursuant to K.S.A. 2015 Supp. 75-  
12 4315d, and amendments thereto, or the disclosure of which is prohibited or  
13 restricted pursuant to specific authorization of federal law, state statute or  
14 rule of the Kansas supreme court or rule of the senate committee on  
15 confirmation oversight relating to information submitted to the committee  
16 pursuant to K.S.A. 2015 Supp. 75-4315d, and amendments thereto, to  
17 restrict or prohibit disclosure.

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

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

22 (4) Personnel records, performance ratings or individually identifiable  
23 records pertaining to employees or applicants for employment, ~~except that~~.  
24 This exemption shall not apply to: (A) The names, positions, salaries or  
25 actual compensation employment contracts or employment-related  
26 contracts or agreements and lengths of service of officers and employees  
27 of public agencies once they are employed as such; (B) *applications of*  
28 *persons seeking to fill vacant elected offices appointed by the governor; or*  
29 *(C) applications of persons seeking to fill vacant judicial offices which are*  
30 *subject to retention elections and who are appointed by the governor.*

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

33 (6) Letters of reference or recommendation pertaining to the character  
34 or qualifications of an identifiable individual, except documents relating to  
35 the appointment of persons to fill a vacancy in an elected 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 who  
4 lawfully makes a donation to a public agency, if anonymity of the donor is  
5 a condition of the donation, except if the donation is intended for or  
6 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 failure  
11 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 such  
15 conditions as the court may impose, if the court finds that disclosure:

16 (A) Is in the public interest;

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

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

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

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

24 (F) would not reveal the name, address, phone number or any other  
25 information which specifically and individually identifies the victim of any  
26 sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated,  
27 prior to their repeal, or article 55 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 disclosure  
36 would interfere with a prospective administrative adjudication or civil  
37 litigation or reveal the identity of a confidential source or undercover  
38 agent.

39 (12) Records of emergency or security information or procedures of a  
40 public agency, or plans, drawings, specifications or related information for  
41 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 estimates  
4 or evaluations made by or for a public agency relative to the acquisition of  
5 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 or  
9 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 by  
26 a person other than an employee of a public agency or records which are  
27 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 are  
37 publicly cited or identified in an open meeting or in an agenda of an open  
38 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 of

1 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 of  
9 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 and  
16 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 (27) Specifications for competitive bidding, until the specifications  
22 are officially approved by the public agency.

23 (28) Sealed bids and related documents, until a bid is accepted or all  
24 bids rejected.

25 (29) Correctional records pertaining to an identifiable inmate or  
26 release, except that:

27 (A) The name; photograph and other identifying information;  
28 sentence data; parole eligibility date; custody or supervision level;  
29 disciplinary record; supervision violations; conditions of supervision,  
30 excluding requirements pertaining to mental health or substance abuse  
31 counseling; location of facility where incarcerated or location of parole  
32 office maintaining supervision and address of a releasee whose crime was  
33 committed after the effective date of this act shall be subject to disclosure  
34 to any person other than another inmate or releasee, except that the  
35 disclosure of the location of an inmate transferred to another state pursuant  
36 to the interstate corrections compact shall be at the discretion of the  
37 secretary of corrections;

38 (B) the attorney general, law enforcement agencies, counsel for the  
39 inmate to whom the record pertains and any county or district attorney  
40 shall have access to correctional records to the extent otherwise permitted  
41 by law;

42 (C) the information provided to the law enforcement agency pursuant  
43 to the sex offender registration act, K.S.A. 22-4901 et seq., and

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

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

11 (30) Public records containing information of a personal nature where  
12 the public disclosure thereof would constitute a clearly unwarranted  
13 invasion of personal privacy.

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

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

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

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

30 (35) Any report or record which is made pursuant to K.S.A. 65-4922,  
31 65-4923 or 65-4924, and amendments thereto, and which is privileged  
32 pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

33 (36) Information which would reveal the precise location of an  
34 archeological site.

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

38 (38) Risk-based capital reports, risk-based capital plans and  
39 corrective orders including the working papers and the results of any  
40 analysis filed with the commissioner of insurance in accordance with  
41 K.S.A. 40-2c20 and 40-2d20, and amendments thereto.

42 (39) Memoranda and related materials required to be used to support  
43 the annual actuarial opinions submitted pursuant to K.S.A. 40-409(b), and

1 amendments thereto.

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

4 (41) All financial analysis ratios and examination synopses  
5 concerning insurance companies that are submitted to the commissioner by  
6 the national association of insurance commissioners' insurance regulatory  
7 information system.

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

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

16 (44) The amount of franchise tax paid to the secretary of revenue or  
17 the secretary of state by domestic corporations, foreign corporations,  
18 domestic limited liability companies, foreign limited liability companies,  
19 domestic limited partnership, foreign limited partnership, domestic limited  
20 liability partnerships and foreign limited liability partnerships.

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

35 (46) Any information or material received by the register of deeds of  
36 a county from military discharge papers, DD Form 214. Such papers shall  
37 be disclosed: To the military dischargee; to such dischargee's immediate  
38 family members and lineal descendants; to such dischargee's heirs, agents  
39 or assigns; to the licensed funeral director who has custody of the body of  
40 the deceased dischargee; when required by a department or agency of the  
41 federal or state government or a political subdivision thereof; when the  
42 form is required to perfect the claim of military service or honorable  
43 discharge or a claim of a dependent of the dischargee; and upon the written

1 approval of the commissioner of veterans affairs, to a person conducting  
2 research.

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

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

12 (49) An individual's e-mail address, cell phone number and other  
13 contact information which has been given to the public agency for the  
14 purpose of public agency notifications or communications which are  
15 widely distributed to the public.

16 (50) Information provided by providers to the local collection point  
17 administrator or to the 911 coordinating council pursuant to the Kansas  
18 911 act, and amendments thereto, upon request of the party submitting  
19 such records.

20 (51) Records of a public agency on a public website which are  
21 searchable by a keyword search and identify the home address or home  
22 ownership of a law enforcement officer as defined in K.S.A. 2015 Supp.  
23 21-5111, and amendments thereto, parole officer, probation officer, court  
24 services officer or community correctional services officer. Such  
25 individual officer shall file with the custodian of such record a request to  
26 have such officer's identifying information restricted from public access on  
27 such public website. Within 10 business days of receipt of such requests,  
28 the public agency shall restrict such officer's identifying information from  
29 such public access. Such restriction shall expire after five years and such  
30 officer may file with the custodian of such record a new request for  
31 restriction at any time.

32 (52) Records of a public agency on a public website which are  
33 searchable by a keyword search and identify the home address or home  
34 ownership of a federal judge, a justice of the supreme court, a judge of the  
35 court of appeals, a district judge, a district magistrate judge, a municipal  
36 judge, the United States attorney for the district of Kansas, an assistant  
37 United States attorney, a special assistant United States attorney, the  
38 attorney general, an assistant attorney general, a special assistant attorney  
39 general, a county attorney, an assistant county attorney, a special assistant  
40 county attorney, a district attorney, an assistant district attorney, a special  
41 assistant district attorney, a city attorney, an assistant city attorney or a  
42 special assistant city attorney. Such person shall file with the custodian of  
43 such record a request to have such person's identifying information

1 restricted from public access on such public website. Within 10 business  
2 days of receipt of such requests, the public agency shall restrict such  
3 person's identifying information from such public access. Such restriction  
4 shall expire after five years and such person may file with the custodian of  
5 such record a new request for restriction at any time.

6 (53) Records of a public agency that would disclose the name, home  
7 address, zip code, e-mail address, phone number or cell phone number or  
8 other contact information for any person licensed to carry concealed  
9 handguns or of any person who enrolled in or completed any weapons  
10 training in order to be licensed or has made application for such license  
11 under the personal and family protection act, K.S.A. 2015 Supp. 75-7c01  
12 et seq., and amendments thereto, shall not be disclosed unless otherwise  
13 required by law.

14 (54) Records of a utility concerning information about cyber security  
15 threats, attacks or general attempts to attack utility operations provided to  
16 law enforcement agencies, the state corporation commission, the federal  
17 energy regulatory commission, the department of energy, the southwest  
18 power pool, the North American electric reliability corporation, the federal  
19 communications commission or any other federal, state or regional  
20 organization that has a responsibility for the safeguarding of  
21 telecommunications, electric, potable water, waste water disposal or  
22 treatment, motor fuel or natural gas energy supply systems.

23 (55) Records of a public agency containing information or reports  
24 obtained and prepared by the office of the state bank commissioner in the  
25 course of licensing or examining a person engaged in money transmission  
26 business pursuant to K.S.A. 9-508 et seq., and amendments thereto, shall  
27 not be disclosed except pursuant to K.S.A. 9-513c, and amendments  
28 thereto, or unless otherwise required by law.

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

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

1 prepared.

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

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

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

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

27 Sec. 2. K.S.A. 2015 Supp. 45-221 is hereby repealed.

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