

HOUSE BILL No. 2098

By Committee on Judiciary

1-29

1 AN ACT concerning records; relating to the Kansas open records act;
2 criminal investigation records; amending K.S.A. 2018 Supp. 45-221
3 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2018 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. 2018 Supp. 75-
13 4315d, and amendments thereto, or the disclosure of which is prohibited or
14 restricted pursuant to specific authorization of federal law, state statute or
15 rule of the Kansas supreme court or rule of the senate committee on
16 confirmation oversight relating to information submitted to the committee
17 pursuant to K.S.A. 2018 Supp. 75-4315d, and amendments thereto, to
18 restrict or prohibit disclosure.

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

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

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

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

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

34 (7) Library, archive and museum materials contributed by private
35 persons, to the extent of any limitations imposed as conditions of the
36 contribution.

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

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

10 (10) (A) Criminal investigation records, except as provided herein.
 11 The district court, in an action brought pursuant to K.S.A. 45-222, and
 12 amendments thereto, may order disclosure of such records, subject to such
 13 conditions as the court may impose, if the court finds that disclosure *is in*
 14 *the public interest and is not outweighed by the harm caused by the*
 15 *following:*

16 ~~(A) Is in the public interest;~~

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

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

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

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

25 ~~(F)(v) would not reveal the release of~~ the name, address, phone
 26 number or any other information ~~which~~ *that* specifically and individually
 27 identifies the victim of any sexual offense in article 35 of chapter 21 of the
 28 Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21
 29 of the Kansas Statutes Annotated, and amendments thereto.

30 (B) *For the purposes of subsection (a)(10), public interest means*
 31 *more than mere public curiosity. To be a matter involving public interest,*
 32 *the matter must affect a right or expectation of the community at large and*
 33 *further public evaluation of governmental performance.*

34 (C) If a public record is discretionarily closed by a public agency
 35 pursuant to ~~this~~ subsection (a)(10), the record custodian, upon request,
 36 shall provide a written citation to the specific provisions of paragraphs
 37 (10)(A)(i) through ~~(F)~~ (10)(A)(v) that necessitate closure of that public
 38 record.

39 (11) Records of agencies involved in administrative adjudication or
 40 civil litigation, compiled in the process of detecting or investigating
 41 violations of civil law or administrative rules and regulations, if disclosure
 42 would interfere with a prospective administrative adjudication or civil
 43 litigation or reveal the identity of a confidential source or undercover

1 agent.

2 (12) Records of emergency or security information or procedures of a
3 public agency, or plans, drawings, specifications or related information for
4 any building or facility—~~which~~ *that* is used for purposes requiring security
5 measures in or around the building or facility or—~~which~~ *that* is used for the
6 generation or transmission of power, water, fuels or communications, if
7 disclosure would jeopardize security of the public agency, building or
8 facility.

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

12 (14) Correspondence between a public agency and a private
13 individual, other than correspondence—~~which~~ *that* is intended to give notice
14 of an action, policy or determination relating to any regulatory, supervisory
15 or enforcement responsibility of the public agency or—~~which~~ *that* is widely
16 distributed to the public by a public agency and is not specifically in
17 response to communications from such a private individual.

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

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

24 (A) The information—~~which~~ *that* the agency maintains on computer
25 facilities; and

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

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

31 (18) Plans, designs, drawings or specifications—~~which~~ *that* are
32 prepared by a person other than an employee of a public agency or records
33 ~~which~~ *that* are the property of a private person.

34 (19) Well samples, logs or surveys—~~which~~ *that* the state corporation
35 commission requires to be filed by persons who have drilled or caused to
36 be drilled, or are drilling or causing to be drilled, holes for the purpose of
37 discovery or production of oil or gas, to the extent that disclosure is
38 limited by rules and regulations of the state corporation commission.

39 (20) Notes, preliminary drafts, research data in the process of
40 analysis, unfunded grant proposals, memoranda, recommendations or
41 other records in which opinions are expressed or policies or actions are
42 proposed, except that this exemption shall not apply when such records are
43 publicly cited or identified in an open meeting or in an agenda of an open

1 meeting.

2 (21) Records of a public agency having legislative powers, ~~which~~
3 ~~records~~ that pertain to proposed legislation or amendments to proposed
4 legislation, except that this exemption shall not apply when such records
5 are:

6 (A) Publicly cited or identified in an open meeting or in an agenda of
7 an open meeting; or

8 (B) distributed to a majority of a quorum of any body ~~which~~ that has
9 authority to take action or make recommendations to the public agency
10 with regard to the matters to which such records pertain.

11 (22) Records of a public agency having legislative powers, ~~which~~
12 ~~records~~ that pertain to research prepared for one or more members of such
13 agency, except that this exemption shall not apply when such records are:

14 (A) Publicly cited or identified in an open meeting or in an agenda of
15 an open meeting; or

16 (B) distributed to a majority of a quorum of any body ~~which~~ that has
17 authority to take action or make recommendations to the public agency
18 with regard to the matters to which such records pertain.

19 (23) Library patron and circulation records ~~which~~ that pertain to
20 identifiable individuals.

21 (24) Records ~~which~~ that are compiled for census or research purposes
22 and ~~which~~ pertain to identifiable individuals.

23 (25) Records ~~which~~ that represent and constitute the work product of
24 an attorney.

25 (26) Records of a utility or other public service pertaining to
26 individually identifiable residential customers of the utility or service.

27 (27) Specifications for competitive bidding, until the specifications
28 are officially approved by the public agency.

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

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

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

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

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

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

18 (30) Public records containing information of a personal nature where
19 the public disclosure thereof would constitute a clearly unwarranted
20 invasion of personal privacy.

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

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

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

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

37 (35) Any report or record ~~which~~ *that* is made pursuant to K.S.A. 65-
38 4922, 65-4923 or 65-4924, and amendments thereto, and ~~which~~ is
39 privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments
40 thereto.

41 (36) Information ~~which~~ *that* would reveal the precise location of an
42 archeological site.

43 (37) Any financial data or traffic information from a railroad

1 company, to a public agency, concerning the sale, lease or rehabilitation of
2 the railroad's property in Kansas.

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

7 (39) Memoranda and related materials required to be used to support
8 the annual actuarial opinions submitted pursuant to K.S.A. 40-409(b), and
9 amendments thereto.

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

12 (41) All financial analysis ratios and examination synopses
13 concerning insurance companies that are submitted to the commissioner by
14 the national association of insurance commissioners' insurance regulatory
15 information system.

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

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

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

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

43 (46) Any information or material received by the register of deeds of

1 a county from military discharge papers, DD Form 214. Such papers shall
2 be disclosed: To the military dischargee; to such dischargee's immediate
3 family members and lineal descendants; to such dischargee's heirs, agents
4 or assigns; to the licensed funeral director who has custody of the body of
5 the deceased dischargee; when required by a department or agency of the
6 federal or state government or a political subdivision thereof; when the
7 form is required to perfect the claim of military service or honorable
8 discharge or a claim of a dependent of the dischargee; and upon the written
9 approval of the commissioner of veterans affairs, to a person conducting
10 research.

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

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

20 (49) An individual's e-mail address, cell phone number and other
21 contact information ~~which~~ that has been given to the public agency for the
22 purpose of public agency notifications or communications ~~which~~ that are
23 widely distributed to the public.

24 (50) Information provided by providers to the local collection point
25 administrator or to the 911 coordinating council pursuant to the Kansas
26 911 act, and amendments thereto, upon request of the party submitting
27 such records.

28 (51) Records of a public agency on a public website ~~which~~ that are
29 searchable by a keyword search and identify the home address or home
30 ownership of a law enforcement officer as defined in K.S.A. 2018 Supp.
31 21-5111, and amendments thereto, parole officer, probation officer, court
32 services officer or community correctional services officer. Such
33 individual officer shall file with the custodian of such record a request to
34 have such officer's identifying information restricted from public access on
35 such public website. Within 10 business days of receipt of such requests,
36 the public agency shall restrict such officer's identifying information from
37 such public access. Such restriction shall expire after five years and such
38 officer may file with the custodian of such record a new request for
39 restriction at any time.

40 (52) Records of a public agency on a public website ~~which~~ that are
41 searchable by a keyword search and identify the home address or home
42 ownership of a federal judge, a justice of the supreme court, a judge of the
43 court of appeals, a district judge, a district magistrate judge, a municipal

1 judge, the United States attorney for the district of Kansas, an assistant
2 United States attorney, a special assistant United States attorney, the
3 attorney general, an assistant attorney general, a special assistant attorney
4 general, a county attorney, an assistant county attorney, a special assistant
5 county attorney, a district attorney, an assistant district attorney, a special
6 assistant district attorney, a city attorney, an assistant city attorney or a
7 special assistant city attorney. Such person shall file with the custodian of
8 such record a request to have such person's identifying information
9 restricted from public access on such public website. Within 10 business
10 days of receipt of such requests, the public agency shall restrict such
11 person's identifying information from such public access. Such restriction
12 shall expire after five years and such person may file with the custodian of
13 such record a new request for restriction at any time.

14 (53) Records of a public agency that would disclose the name, home
15 address, zip code, e-mail address, phone number or cell phone number or
16 other contact information for any person licensed to carry concealed
17 handguns or of any person who enrolled in or completed any weapons
18 training in order to be licensed or has made application for such license
19 under the personal and family protection act, K.S.A. 2018 Supp. 75-7c01
20 et seq., and amendments thereto, shall not be disclosed unless otherwise
21 required by law.

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

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

37 (b) Except to the extent disclosure is otherwise required by law or as
38 appropriate during the course of an administrative proceeding or on appeal
39 from agency action, a public agency or officer shall not disclose financial
40 information of a taxpayer ~~which~~ *that* may be required or requested by a
41 county appraiser or the director of property valuation to assist in the
42 determination of the value of the taxpayer's property for ad valorem
43 taxation purposes; or any financial information of a personal nature

1 required or requested by a public agency or officer, including a name, job
2 description or title revealing the salary or other compensation of officers,
3 employees or applicants for employment with a firm, corporation or
4 agency, except a public agency. Nothing contained herein shall be
5 construed to prohibit the publication of statistics, so classified as to
6 prevent identification of particular reports or returns and the items thereof.

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

10 (d) If a public record contains material ~~which~~ *that* is not subject to
11 disclosure pursuant to this act, the public agency shall separate or delete
12 such material and make available to the requester that material in the
13 public record ~~which~~ *that* is subject to disclosure pursuant to this act. If a
14 public record is not subject to disclosure because it pertains to an
15 identifiable individual, the public agency shall delete the identifying
16 portions of the record and make available to the requester any remaining
17 portions ~~which~~ *that* are subject to disclosure pursuant to this act, unless the
18 request is for a record pertaining to a specific individual or to such a
19 limited group of individuals that the individuals' identities are reasonably
20 ascertainable, the public agency shall not be required to disclose those
21 portions of the record ~~which~~ *that* pertain to such individual or individuals.

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

25 (f) Notwithstanding the provisions of subsection (a), any public
26 record ~~which~~ *that* has been in existence more than 70 years shall be open
27 for inspection by any person unless disclosure of the record is specifically
28 prohibited or restricted by federal law, state statute or rule of the Kansas
29 supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and
30 amendments thereto.

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

35 Sec. 2. K.S.A. 2018 Supp. 45-221 is hereby repealed.

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