

HOUSE BILL No. 2292

By Committee on Judiciary

2-9

1 AN ACT concerning open records; creating exemptions in the open
2 records act for cybersecurity assessments, cybersecurity plans and
3 cybersecurity vulnerabilities; amending K.S.A. 2020 Supp. 45-217 and
4 45-221 and repealing the existing sections.

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

7 Section 1. K.S.A. 2020 Supp. 45-217 is hereby amended to read as
8 follows: 45-217. As used in the open records act, unless the context
9 otherwise requires:

10 (a) "Business day" means any day other than a Saturday, Sunday or
11 day designated as a holiday by the congress of the United States, by the
12 legislature or governor of this state or by the respective political
13 subdivision of this state.

14 (b) "Clearly unwarranted invasion of personal privacy" means
15 revealing information that would be highly offensive to a reasonable
16 person, including information that may pose a risk to a person or property
17 and is not of legitimate concern to the public.

18 (c) "Criminal investigation records" means: (1) Every audio or video
19 recording made and retained by law enforcement using a body camera or
20 vehicle camera as defined by K.S.A. 2020 Supp. 45-254, and amendments
21 thereto; and (2) records of an investigatory agency or criminal justice
22 agency as defined by K.S.A. 22-4701, and amendments thereto, compiled
23 in the process of preventing, detecting or investigating violations of
24 criminal law, but does not include police blotter entries, court records,
25 rosters of inmates of jails or other correctional or detention facilities or
26 records pertaining to violations of any traffic law other than vehicular
27 homicide as defined by K.S.A. 21-3405, prior to its repeal, or K.S.A. 2020
28 Supp. 21-5406, and amendments thereto.

29 (d) "Custodian" means the official custodian or any person designated
30 by the official custodian to carry out the duties of custodian of this act.

31 (e) "*Cybersecurity assessment*" means an investigation undertaken by
32 a person, governmental body or other entity to identify vulnerabilities in
33 cybersecurity plans.

34 (f) "*Cybersecurity plan*" means information about a person's
35 information systems, network security, encryption, network mapping,
36 access control, passwords, authentication practices, computer hardware

1 *or software or response to cybersecurity incidents.*

2 (g) "Cybersecurity vulnerability" means a deficiency within computer
 3 hardware or software, or within a computer network or information
 4 system, that could be exploited by unauthorized parties for use against an
 5 individual computer user or a computer network or information system.

6 (h) "Official custodian" means any officer or employee of a public
 7 agency who is responsible for the maintenance of public records,
 8 regardless of whether such records are in the officer's or employee's actual
 9 personal custody and control.

10 ~~(i)~~(i) (1) "Public agency" means the state or any political or taxing
 11 subdivision of the state or any office, agency or instrumentality thereof, or
 12 any other entity receiving or expending and supported in whole or in part
 13 by the public funds appropriated by the state or by public funds of any
 14 political or taxing subdivision of the state.

15 (2) "Public agency" ~~shall~~ does not include:

16 (A) Any entity solely by reason of payment from public funds for
 17 property, goods or services of such entity; or (B) any municipal judge,
 18 judge of the district court, judge of the court of appeals or justice of the
 19 supreme court.

20 ~~(j)~~(j) (1) "Public record" means any recorded information, regardless
 21 of form, characteristics or location, which is made, maintained or kept by
 22 or is in the possession of:

23 (A) Any public agency; or

24 (B) any officer or employee of a public agency pursuant to the
 25 officer's or employee's official duties and which is related to the functions,
 26 activities, programs or operations of any public agency.

27 (2) "Public record" shall include, but not be limited to, an agreement
 28 in settlement of litigation involving the Kansas public employees
 29 retirement system and the investment of moneys of the fund.

30 (3) Notwithstanding the provisions of subsection ~~(g)~~ (j)(1), "public
 31 record" ~~shall~~ does not include:

32 (A) Records ~~which~~ that are owned by a private person or entity and
 33 are not related to functions, activities, programs or operations funded by
 34 public funds. As used in this subparagraph, "private person" ~~shall~~ does not
 35 include an officer or employee of a public agency who is acting pursuant
 36 to the officer's or employee's official duties;

37 (B) records ~~which~~ that are made, maintained or kept by an individual
 38 who is a member of the legislature or of the governing body of any
 39 political or taxing subdivision of the state; or

40 (C) records of employers related to the employer's individually
 41 identifiable contributions made on behalf of employees for workers
 42 compensation, social security, unemployment insurance or retirement. The
 43 provisions of this subparagraph shall not apply to records of employers of

1 lump-sum payments for contributions as described in this subparagraph
2 paid for any group, division or section of an agency.

3 ~~(h)~~(k) "Undercover agent" means an employee of a public agency
4 responsible for criminal law enforcement who is engaged in the detection
5 or investigation of violations of criminal law in a capacity where such
6 employee's identity or employment by the public agency is secret.

7 Sec. 2. K.S.A. 2020 Supp. 45-221 is hereby amended to read as
8 follows: 45-221. (a) Except to the extent disclosure is otherwise required
9 by law, a public agency shall not be required to disclose:

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

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

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

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

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

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

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

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

43 (9) Testing and examination materials, before the test or examination

1 is given or if it is to be given again, or records of individual test or
2 examination scores, other than records ~~which~~ *that* show only passage or
3 failure and not specific scores.

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

8 (A) Is in the public interest;

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

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

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

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

16 (F) would not reveal the name, address, phone number or any other
17 information ~~which~~ *that* specifically and individually identifies the victim
18 of any sexual offense in article 35 of chapter 21 of the Kansas Statutes
19 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
20 Statutes Annotated, and amendments thereto.

21 If a public record is discretionarily closed by a public agency pursuant
22 to this subsection, the record custodian, upon request, shall provide a
23 written citation to the specific provisions of ~~paragraphs~~ *subparagraphs* (A)
24 through (F) that necessitate closure of that public record.

25 (11) Records of agencies involved in administrative adjudication or
26 civil litigation, compiled in the process of detecting or investigating
27 violations of civil law or administrative rules and regulations, if disclosure
28 would interfere with a prospective administrative adjudication or civil
29 litigation or reveal the identity of a confidential source or undercover
30 agent.

31 (12) Records of emergency or security information or procedures of a
32 public agency, *if disclosure would jeopardize public safety, including*
33 *records of cybersecurity plans, cybersecurity assessments and*
34 *cybersecurity vulnerabilities or procedures related to cybersecurity plans,*
35 *cybersecurity assessments and cybersecurity vulnerabilities,* or plans,
36 drawings, specifications or related information for any building or facility
37 ~~which~~ *that* is used for purposes requiring security measures in or around
38 the building or facility or ~~which~~ *that* is used for the generation or
39 transmission of power, water, fuels or communications, if disclosure would
40 jeopardize security of the public agency, building or facility.

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

1 (14) Correspondence between a public agency and a private
2 individual, other than correspondence ~~which-that~~ is intended to give notice
3 of an action, policy or determination relating to any regulatory, supervisory
4 or enforcement responsibility of the public agency or ~~which-that~~ is widely
5 distributed to the public by a public agency and is not specifically in
6 response to communications from such a private individual.

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

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

13 (A) The information ~~which-that~~ the agency maintains on computer
14 facilities; and

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

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

20 (18) Plans, designs, drawings or specifications ~~which-that~~ are
21 prepared by a person other than an employee of a public agency or records
22 ~~which-that~~ are the property of a private person.

23 (19) Well samples, logs or surveys ~~which-that~~ the state corporation
24 commission requires to be filed by persons who have drilled or caused to
25 be drilled, or are drilling or causing to be drilled, holes for the purpose of
26 discovery or production of oil or gas, to the extent that disclosure is
27 limited by rules and regulations of the state corporation commission.

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

34 (21) Records of a public agency having legislative powers, which
35 records pertain to proposed legislation or amendments to proposed
36 legislation, except that this exemption shall not apply when such records
37 are:

38 (A) Publicly cited or identified in an open meeting or in an agenda of
39 an open meeting; or

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

43 (22) Records of a public agency having legislative powers, which

1 records pertain to research prepared for one or more members of such
2 agency, except that this exemption shall not apply when such records are:

3 (A) Publicly cited or identified in an open meeting or in an agenda of
4 an open meeting; or

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

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

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

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

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

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

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

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

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

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

37 (C) the information provided to the law enforcement agency pursuant
38 to the sex offender registration act, K.S.A. 22-4901 et seq., and
39 amendments thereto, shall be subject to disclosure to any person, except
40 that the name, address, telephone number or any other information which
41 specifically and individually identifies the victim of any offender required
42 to register as provided by the Kansas offender registration act, K.S.A. 22-
43 4901 et seq., and amendments thereto, shall not be disclosed; and

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

6 (30) Public records containing information of a personal nature where
7 the public disclosure thereof would constitute a clearly unwarranted
8 invasion of personal privacy.

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

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

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

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

25 (35) Any report or record ~~which~~*that* is made pursuant to K.S.A. 65-
26 4922, 65-4923 or 65-4924, and amendments thereto, and ~~which~~*that* is
27 privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments
28 thereto.

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

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

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

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

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

43 (41) All financial analysis ratios and examination synopses

1 concerning insurance companies that are submitted to the commissioner by
2 the national association of insurance commissioners' insurance regulatory
3 information system.

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

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

12 (44) The amount of franchise tax paid to the secretary of revenue or
13 the secretary of state by domestic corporations, foreign corporations,
14 domestic limited liability companies, foreign limited liability companies,
15 domestic limited partnership, foreign limited partnership, domestic limited
16 liability partnerships and foreign limited liability partnerships.

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

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

42 (47) Information that would reveal the location of a shelter or a
43 safehouse or similar place where persons are provided protection from

1 abuse or the name, address, location or other contact information of
2 alleged victims of stalking, domestic violence or sexual assault.

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

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

12 (50) Information provided by providers to the local collection point
13 administrator or to the 911 coordinating council pursuant to the Kansas
14 911 act, and amendments thereto, upon request of the party submitting
15 such records.

16 (51) Records of a public agency on a public website ~~which~~ that are
17 searchable by a keyword search and identify the home address or home
18 ownership of a law enforcement officer as defined in K.S.A. 2020 Supp.
19 21-5111, and amendments thereto, parole officer, probation officer, court
20 services officer or community correctional services officer. Such
21 individual officer shall file with the custodian of such record a request to
22 have such officer's identifying information restricted from public access on
23 such public website. Within 10 business days of receipt of such requests,
24 the public agency shall restrict such officer's identifying information from
25 such public access. Such restriction shall expire after five years and such
26 officer may file with the custodian of such record a new request for
27 restriction at any time.

28 (52) 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 federal judge, a justice of the supreme court, a judge of the
31 court of appeals, a district judge, a district magistrate judge, a municipal
32 judge, the United States attorney for the district of Kansas, an assistant
33 United States attorney, a special assistant United States attorney, the
34 attorney general, an assistant attorney general, a special assistant attorney
35 general, a county attorney, an assistant county attorney, a special assistant
36 county attorney, a district attorney, an assistant district attorney, a special
37 assistant district attorney, a city attorney, an assistant city attorney or a
38 special assistant city attorney. Such person shall file with the custodian of
39 such record a request to have such person's identifying information
40 restricted from public access on such public website. Within 10 business
41 days of receipt of such requests, the public agency shall restrict such
42 person's identifying information from such public access. Such restriction
43 shall expire after five years and such person may file with the custodian of

1 such record a new request for restriction at any time.

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

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

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

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

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

41 (d) If a public record contains material ~~which~~ that is not subject to
42 disclosure pursuant to this act, the public agency shall separate or delete
43 such material and make available to the requester that material in the

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

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

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

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

23 Sec. 3. K.S.A. 2020 Supp. 45-217 and 45-221 are hereby repealed.

24 Sec. 4. This act shall take effect and be in force from and after its
25 publication in the statute book.