

Date: February 6, 2024
To: Chairwoman Humphries and the House Committee on Judiciary
From: City of Overland Park, Michael Koss, City Attorney
Re: HB 2599 – Opponent Testimony (Written)

The City of Overland Park respectfully submits this testimony on HB 2599. The City fully supports the transparency promoted by the Kansas Open Records Act (KORA), but has concerns about the potential of HB 2599 to create a burdensome unfunded mandate and severely limit the ability of taxpayers to recover the cost incurred to respond to open records requests.

The most troubling part of the bill is that it potentially requires local taxpayers to pay for the cost of redacting information from public records. Local governments are required to redact certain information (e.g. social security numbers, names of sex crime victims, etc.) and may redact other information (e.g. medical records, emergency security information, etc.). The Kansas Supreme Court has said that requestors are required to reimburse local governments and their taxpayers for the cost of staff time spent redacting such information because such redaction is included as part of K.S.A. 45-219(c)(1)'s phrase "actual cost of *furnishing copies*."¹ HB 2599 would delete this phrase and replace it with the "actual cost of *copying*." That change arguably removes the basis for local governments to recoup the cost of staff time to redact records, thus creating an expensive unfunded mandate on local taxpayers who have to assume that cost.

In Overland Park, a significant portion of the time spent responding to large record requests is spent redacting closed information. For example, the City received a request for over 15,000 emails related to a matter that was the subject multiple lawsuits. Many of those emails contained information about juvenile victims and were subject to attorney-client privilege, so staff would've had to review and redact such information from the emails. If HB 2599 had been law, then local taxpayers would have had to pay for staff to spend approximately 3 years reviewing those emails, rather than requiring the requestor to reimburse local taxpayers up front for that significant expense. By requiring advance payment, the KORA currently encourages requestors to narrow the scope of their requests to better target the information they're seeking without creating undue burdens on public agencies. Furthermore, it protects the requestor from receiving large amounts of information that may not be relevant to the real purpose of the request.

In summary, the Kansas Open Records Act as currently written strikes an appropriate balance that advances transparency without overburdening local taxpayers. For the stated reasons, the City of Overland Park respectfully requests that the Committee not advance HB 2599 to the full House. Thank you for your consideration.

¹ *Data Tree, LLC v. Meek*, 279 Kan. 445, 465 (2005) ("Redaction of information in public records not subject to disclosure is an act that would be included in the "actual cost of furnishing copies." Nothing in the KORA requires or contemplates shifting any portion of the actual cost of furnishing copies of the requested records from the requester to the custodian of the records.").