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## STATE OF KANSAS

February 5, 2024

### **Testimony on HB2599 (Written-Only / Neutral)**

House Committee on Judiciary  
Tuesday, February 6, 2024

Chair Humphries and members of the Committee:

Thank you for the opportunity to provide testimony on House Bill 2599.

Most KORA requests to government agencies are addressed promptly at reasonable cost. There are, however, two categories of problems that can occur when responding to KORA requests.

The first is the agency may charge unreasonably high fees before producing responsive public records. This bill seems directed at aspects of that problem.

The Secretary of State's concern is the other problem – the weaponization of KORA requests as an intentional tool to disrupt agency operations.

It has become a national phenomenon that election offices, often minimally staffed, are inundated with open record requests intended to disrupt their operations.<sup>1</sup> Once a tool of journalists and concerned citizens to hold government accountable, open records requests are increasingly used to disrupt government.

The Secretary of State services three types of KORA requests

1. Business Services Division handles tens of thousands of record requests each year, almost all are done for free and totally online by the requestor. About 750 requests a year are handled by staff and a fee fixed by law is charged for producing the record.
2. Elections Division handles about 75 record requests a year for voter registration records, for which a standardize fee is charged depending on the size of the request.
3. The remaining ~150 requests a year are individually handled by one staff person. In the last 5 years the agency *has charged only one of these requestors a KORA fee*. These requests can be subdivided into four categories.

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<sup>1</sup> Just a scattering of news reports on the phenomena: <https://www.texastribune.org/2023/11/29/weaponized-open-records-texas-government-transparency/>; <https://www.cnn.com/2022/09/21/politics/public-records-requests-trump-supporters/index.html>; <https://www.theguardian.com/us-news/2023/dec/10/georgia-election-records-requests-2024-donald-trump>; <https://www.pennlive.com/news/2022/09/election-offices-challenged-by-surge-of-voting-record-requests.html>; <https://www.nbcnews.com/politics/elections/amateur-fraud-hunters-bury-election-officials-public-records-requests-rcna15432>; <https://news.wosu.org/politics-government/2022-09-08/ohio-election-boards-inundated-with-2020-election-records-requests-before-theyre-destroyed>

- Type 1: Specific indexed and defined record, e.g.- an oath, charter ordinance, interlocal agreement, election equipment certification. These can usually be produced in minutes.
- Type 2: Unique but narrowly described record, usually 60 minutes to locate, review & produce.
- Type 3: A list with dozens of names requesting every e-mail or record that mentions that name. These would take dozens of hours to locate, require legal review, redaction, and compiling into a consolidated pdf. When the requestor is given a detailed cost estimate the request is usually substantially narrowed.
- Type 4: Vague massively expansive requests such as -real example –‘every e-mail to, from, or that mentions staff member X over a four year period.’ Over 66,000 e-mails were responsive. The ability to provide a detailed cost and time estimate for the production results in these types of requests being dropped.

**Comments on Specific Bill Provisions:**

(5)(A)(i)	No fee for electronic copy	No concern if fees can be charged for staff time to scan and prepare electronic records. Petitions for independent candidates or political parties are thousands of pages grouped by county.
(5)(A)(ii)	Charge for only the lowest cost qualified employee	Producing e-mails and other electronic records often requires extensive legal review to ensure that none of the over 100 exemptions are violated. A high-cost employee may be the lowest cost qualified employee.
(5)(B)	No fees charged for determining if a record exists	For large requests that involve e-mails, almost all the staff time is spent determining if a responsive record exists. Search terms narrow the search, but each e-mail must be scanned to ensure it is responsive. Once found, it is generally easy to produce.
(5)(B)	No fees for employee or administrator review	Legal review for exemptions is critical to ensure records that should not be made public stay that way. There are serious legal consequences for improper disclosure. This is not an issue for standard fixed records. It is, however, a major concern for the costs of expansive vague requests that include e-mails.

Thank you for the opportunity to provide comments to the committee.

*/Clayton Barker*

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