

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

KANSAS

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE

OPEN RECORDS AND MEETINGS LAWS IN

KANSAS

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KANSAS

**SIXTH EDITION
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Previously Titled
Tapping Officials' Secrets

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Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

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FOREWORD

Open Records. Kansas law on open records and open meetings is statutory. The Kansas Open Records Act, K.S.A. 45-215, *et seq.*, (KORA) was enacted in 1984; the Kansas Open Meetings Act, K.S.A. 75-4317, *et seq.*, (KOMA) was passed in 1972. The statutes are unrelated and do not overlap but are to be construed together. A few dozen reported decisions construing either act exist, and there is a large volume of Attorney General's Opinions and a small number of unreported trial court decisions.

The predecessor to the current Kansas Open Records Act, K.S.A. 45-201, was enacted in 1957. The present statute became law in 1984, after having been first proposed in 1979. It is designed to be comprehensive, although no effort was made to glean all references to open or restricted access records from all Kansas statutes. Accordingly, specific provisions in other laws still control some open records exemptions. A recent study by the Revisor of Statutes located over 350 statutes that close specific types of records.

The former statute required open access only to those records "required to be kept and maintained." The few cases litigated addressed whether the record was *required* to be kept, or merely was incidentally kept. Judging by the cases, public interest in open records was slight until the post-Watergate era. In the late 1970s, disputes over the meaning of the Open Records Act, which was written negatively, i.e., that all records could be closed except those required to be kept and maintained, resulted in court interpretations favoring common law although not constitutional access. *Stephens v. Van Arsdale*, 227 Kan. 676, 608 P.2d 972 (1980).

At the urging of the Kansas Attorney General and other interested groups and particularly the media and local government groups, the legislature began to address enacting a new statute in 1979. Initial drafts were based largely on the Kentucky law, but the final version, including its characteristic laundry list of exceptions, was hammered out in committee, making the bill virtually entirely original.

The principal reason for delay was the divisive abortion records issue. Right to Life in Kansas Inc. had requested access to Medicaid records kept by the Department of Social and Rehabilitative Services identifying doctors who performed abortions, and the issue was litigated in the courts. The legislature at first grappled with this politically hot issue, then abstained from passing or even considering open records bills until the Kansas Supreme Court ruled in 1982 that the abortion records must be provided under the old law. *State, ex rel. Stephen v. Harder*, 230 Kan. 573, 641 P.2d 366 (1982). The KORA was passed the next year.

The overriding aim was to ensure that all records, regardless of character would be open unless specifically closed. The law contains a strong statement of public policy:

"It is declared to be the public policy of this State that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy."

K.S.A. 45-216(a). *Cypress Media v. City of Overland Park*, 268 Kan. 407.

Virtually every exception contained in the law, K.S.A. 45-221, was raised by special interest groups or by the Kansas League of Municipalities. The KORA has been amended a number of times to add exceptions, definitions and clarifications.

Since 1993, many new exceptions have been added to the list in K.S.A. 45-221(a), bringing the current total to 49. The Kansas Supreme Court has made it clear that the courts, not the agencies, interpret and enforce the law. The Kansas Attorney General has continued to interpret the law administratively in numerous opinions, and subject to one exception, has agreed to continue including the identities of victims of crimes in portions of the Standard Offense Reports open to public inspection. *See* Op. Atty. Gen. 92-149 (1992) (identity of victim of sexual assault may be withheld to prevent an unwarranted invasion of personal privacy).

The history and purposes of the KORA has been exhaustively analyzed by Ted P. Frederickson in *Letting the Sunshine In: An Analysis of the 1984 Kansas Open Records Act*, 33 U. Kan. L. Rev. 205.

The 2000 Legislature made important changes to the law by sunseting all of the exceptions by July 1, 2015, unless they are individually re-enacted under state policy guidelines newly set out in the statute. These standards require exceptions to be created or maintained only if:

1. The record is of a sensitive or personal nature concerning individuals;
2. It is necessary for effective and efficient administration of a governmental program; or
3. It affects confidential information.

The law also established local public information officers and enhanced enforcement procedures. The 2005 legislature postponed the sunset provisions until 2010.

Open Meetings. The first open meetings law in Kansas was enacted in 1972 and amended in 1975. Only minor amendments have occurred since then. It is founded on the basic principle that the people have a right to know the public business, and that public knowledge and information is essential to the effective functioning of the democratic process. Tacha, *The Kansas Open Meeting Act; Sunshine on the Sunflower State?*, 25 U. Kan. L. Rev. 169, 170. The statute contains a strong statement of legislative purpose in K.S.A. 75-4317:

"In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public."

Interpretation of the statute has rested largely with the Kansas Attorney General, who has, in numerous opinions, interpreted the statute liberally to effect its purpose. The Kansas Attorney General has consistently interpreted the law to require openness, and has interpreted the executive session provisions narrowly.

However, court interpretations of the statute have not been so liberal. While the Kansas Supreme Court has enforced the Act in obvious violations, it has tended to side with the governmental agencies in close cases. For example, the court has been moving even further away from the liberal interpretation of the Act in finding that a management company leasing from the county hospital board and running the hospital is not subject to the KOMA. *Memorial Hospital Association Inc. v. Knutsen*, 239 Kan. 663, 722 P.2d 1093 (1986). And, in *State v. Sedgwick County Commissioners*, 244 Kan. 536, 770 P.2d 455 (1989), the court held a public body may change its own quorum requirements to avoid the KOMA.

The courts have held that executive sessions may cover non-exempt matters if segregation is impractical, and that a consensus may be reached in executive session as long as binding action is taken in open session. *State v. USD 305*, 13 Kan. App. 2d 117, 764 P.2d 459 (1988); *O'Hair v. USD 300*, 15 Kan. App. 2d 52, 805 P.2d 40 (1990).

Because there are very few binding Supreme Court decisions interpreting the law, the KOMA is still interpreted and enforced largely by the Attorney General and the Kansas district courts, at the trial level. Both the Attorney General and the district attorneys have made effective use of consent decrees to bring agencies covered by the Act into compliance.

Open Records

I. STATUTE -- BASIC APPLICATION

A. Who can request records?

1. Status of requestor.

“Any person” may request records. K.S.A. 45-218. This includes the Attorney General, and county and district attorneys.

2. Purpose of request.

Public inspection refers to the right of the public to inspect governmental records when there is a laudable object to accomplish or a real and actual interest in obtaining the information. *State, Dept of Social and Rehabilitative Services v. Public Employee Relations Bd. Of Kansas Dept of Human Resources*, 815 P.2d 66, 72 (Kansas 1991).

3. Use of records.

A requester may not use lists of names or addresses obtained pursuant to KORA for purposes of selling or offering for sale property or services. A requester may not sell, give or otherwise make available to any person such information for purposes of allowing that person to use the list in the same manner. In 2003 the legislature removed the criminal penalty contained within 21-3914 and replaced it with the current civil penalty. Op.Atty.Gen. 2009-18.

B. Whose records are and are not subject to the act?

1. Executive branch.

Executive branch is subject to KORA. K.S.A. 45-217(f)1.

2. Legislative bodies.

Legislative bodies are subject to KORA. *Id.*

3. Courts.

Courts are subject to KORA. *Id.* Judges not included; K.S.A. 45-217(f)(2)(B).

4. Nongovernmental bodies.

Includes any entity receiving or expending and supported in whole or part by public funds. K.S.A. 45-217(f)(1). Does not include entities receiving public funds in return for property, goods, or services. K.S.A. 45-217(e)(2)(a).

5. Multi-state or regional bodies.

Multistate or regional bodies are not addressed specifically, presumption is that if the group is partially or wholly funded by public money, then it is subject to KORA. K.S.A. 45-217(e)(1).

6. Advisory boards and commissions, quasi-governmental entities.

These are subject to the act if publicly funded. Op.Atty.Gen. 88-48 (1986).

7. Others.

Not subject to the act are:

a. Records owned by a private person or entity and are not related to functions, activities, programs or operations funded by public funds. K.S.A. 45-217(f)(2).

b. Records which are made, maintained or kept by an individual who is a member of the legislature or of the governing body of any political or taxing subdivision of the state. K.S.A. 45-217(f)(2).

c. Employer records relating to the employer’s individually identifiable contributions made on behalf of employees for workers’ compensation, Social Security, unemployment insurance or retirement. This does not apply to employer records of lump-sum payments for contributions as described in K.S.A. 45-217(f). K.S.A. 45-217(f)(3).

d. Records of any officer or employee of the state or a political or

taxing subdivision of the state if the state or subdivision does not provide the officer or employee with an office which is open to the public at least 35 hours a week. K.S.A. 45-217(e)(2)(C).

C. What records are and are not subject to the act?

1. What kind of records are covered?

Records included are those made, maintained or kept by or in possession of any public agency. This includes settlement agreements on cases of Kansas Employees Retirement System/investment of public funds as public records. However, pursuant to K.S.A. 45-221(a)(1), Kansas Public Employees Retirement System is not obligated to disclose a member’s name and address. Op.Atty.Gen. 94-57 (1994). K.S.A. 45-217(f)(1). The act does not include records owned by a private person or entity which are not related in functions, activities, programs or operations funded by public money or records made, maintained or kept by members of legislature or other governing body. K.S.A. 45-217(f)(2). It also does not include employer records relating to the employer’s individually identifiable contributions made on behalf of employees for workers’ compensation, Social Security, unemployment insurance or retirement. However, employer records relating to lump-sum payments for contributions as described in K.S.A. 45-217(f) are disclosable. K.S.A. 45-217(f)(3). A public agency is not required to *create* a record or to prepare a report or conduct an investigation upon a request for information. Op.Atty.Gen. 93-126 (1993).

2. What physical form of records are covered?

Public record means any recorded information regardless of form or characteristics. K.S.A. 45-217 (f)(1).

3. Are certain records available for inspection but not copying?

Agencies are not required to provide copies of radio or recording tapes or discs, video tapes or film, pictures, slides, graphics, illustrations, or similar audio or visual items or devices unless they are played or shown at a public meeting. K.S.A. 45-219(a).

D. Fee provisions or practices.

1. Levels or limitations on fees.

Fees for copies of records may not exceed the actual cost of furnishing copies, including cost of staff time. K.S.A. 45-219(c)(1). \$.25/page is reasonable for copies of public records. K.S.A. 45-219(c)(5). The Kansas Department of Administration has issued a memo to attempt to standardize fees for state agencies. Although a public agency may establish subscription fees and online access fees for computerized public records, these records must also be available for a fee not exceeding the actual cost of production. Op.Atty.Gen. 95-64 (1995).

2. Particular fee specifications or provisions.

a. Search.

Fees shall include the cost of staff time required to make the information available. K.S.A. 45-219(c)(1). Presumably this means search time is included.

b. Duplication.

Actual cost. K.S.A. 45-219(c)(1).

c. Other.

Fees for electronic records shall include only use of any computer services including staff time. K.S.A. 45-219(c)(2). There is no specific cost provision for microfiche or non-print media.

3. Provisions for fee waivers.

A public agency “may charge.” K.S.A. 45-218(f). No specific provision for waiver. A data processor under contract with a public agency is not required to pay any charges pursuant to KORA when the sole purpose of such data processor is to develop new programs for easier access. Op.Atty.Gen. 93-132 (1993).

4. Requirements or prohibitions regarding advance payment.

A public agency “may” require advance payment. K.S.A. 45-218(f); K.S.A. 45-219(a). *State ex rel. Stephen v. Harder*, 230 Kan. 573, 641 P.2d 366 (1982).

5. Have agencies imposed prohibitive fees to discourage requesters?

A charge of \$.25 page is deemed reasonable. Any person requesting records may appeal the reasonableness of the fees charge for providing access to or furnishing copies of such records to the Secretary of Administration whose decision shall be final. K.S.A. 45-219(c)(5).

E. Who enforces the act?

1. Attorney General’s role.

In investigating alleged violations, the AG or county/district attorney may subpoena witnesses, investigate, etc. K.S.A. 45-228.

2. Availability of an ombudsman.

Government body shall designate a local Freedom of Information Act officer who can be available to resolve disputes. K.S.A. 45-226

3. Commission or agency enforcement.

Any person can bring suit. District court has jurisdiction. K.S.A. 45-222

F. Are there sanctions for noncompliance?

Any agency that knowingly violates the act can be fined up to \$500 for each violation. K.S.A. 45-223. Attorney fees can be awarded for the prevailing party. K.S.A. 45-222(c).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open records statute.

1. Character of exemptions.

a. General or specific?

Kansas has a laundry list exemption statute.

Custodians may refuse to provide access to public records if a request places an unreasonable burden in producing the records. K.S.A. 45-218(e). Refusal must be sustained by a preponderance of the evidence. K.S.A. 45-218(e); Op. Atty.Gen. 78-208 (1978); Op. Atty.Gen. 76-359 (1976); Op. Atty.Gen. 87-137 (1987).

Custodians may refuse a request if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the agency. K.S.A. 45-218(e). Refusal must be sustained by a preponderance of the evidence.

b. Mandatory or discretionary?

Discretionary.

c. Patterned after federal Freedom of Information Act?

No.

2. Discussion of each exemption.

a. Records specifically prohibited or restricted from disclosure by federal law, state statute, or rule of Kansas Supreme Court, K.S.A. 45-221(a)(1). Includes tax return information. Op. Atty.Gen. 90-20; K.S.A. 79-3614.

b. Records privileged under rules of evidence. K.S.A. 45-221(a)(2).

c. Medical, psychiatric, psychological or alcoholism or drug dependency treatment records. K.S.A. 45-221(a)(3); Op. Atty.Gen. 94-81(1994).

d. Personnel records. K.S.A. 45-221(a)(4). Op. Atty.Gen. 87-109 (1987). Op. Atty.Gen. 91-50, 9-136, 92-132, 89-50, 94-121.

e. Undercover agent or informant. K.S.A. 45-221(a)(5).

f. Letters of reference or recommendation. K.S.A. 45-221(a)(6).

g. Library, archive and museum materials contributed by private persons. K.S.A. 45-221(a)(7).

h. Information concerning an individual who lawfully makes a donation to a public agency. K.S.A. 45-221(a)(8).

i. Testing and examination materials. K.S.A. 45-221(a)(9).

j. Criminal investigation records. A district court may order disclosure in an action brought under K.S.A. 45-222 (civil remedies to enforce KORA) if the court finds that disclosure: (1) is in the public interest; (2) would not interfere with any prospective law enforcement action; (3) would not reveal the identity of any confidential source or undercover agent; (4) would not reveal confidential investigation techniques or procedures not known to the general public; (5) would not endanger the life or physical safety of any person; and (6) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in Article 35 of Chapter 21 of the Kansas Statutes Annotated, and amendments thereto. K.S.A. 45-221(a)(10).

Public interest means more than public curiosity. Public interest existed in disclosure of murder investigation files where inconsistent statements were reported and definite disagreements arose between various law enforcement agencies. *Harris Enterprises Inc. v. Moore*, 241 Kan. 59, 734 P.2d 1083 (1987). Records compiled in the process of preventing, detecting or investigating violations of criminal law are not subject to mandatory disclosure. Op. Atty.Gen. 87-25 (1987). A “jail book” listing persons placed in jail and other general information must be open for public inspection. *Id.* The front page of standard offense report must be open for public inspection. *Id.* Mug shots may be disclosed. *Id.* A permanent record of all felony offenses reported in a jurisdiction must be open for public inspection. Op. Atty.Gen. 79-17 (1979). Reports, memoranda, or other internal government documents made by officers in connection with an investigation or prosecution are not open for public inspection. *Id.* Motor vehicle accident reports must be open for public inspection. *Id.* Municipal court DUI diversion agreements are public records under KORA and must be disclosed upon request. Op. Atty.Gen. 94-7 (1994).

k. Records of agencies involved in administrative adjudication or civil litigation. K.S.A. 45-221(a)(11), except certain KPERS settlement records. K.S.A. 45-217(f)(1).

l. Emergency or security information. K.S.A. 45-221(a)(12).

m. Contents of appraisals or engineering. K.S.A. 45-221(a)(13). But tax assessment records are open. Op. Atty.Gen. 91-145.

n. Correspondence between a public agency and a private individual. K.S.A. 45-221(a)(14).

o. Records pertaining to employer-employee negotiation. K.S.A. 45-221(a)(15). *But, c.f. State SRS v. PERB*, 249 Kan. 163, 815 P.2d 66 (1991).

p. Software programs for electronic data processing and documentation. K.S.A. 45-221(a)(16).

q. Applications, financial statements and other information submitted in connection with applications for student financial assistance. K.S.A. 45-221(a)(17).

r. Plans, designs, drawings or specifications which are the property of a private person. K.S.A. 45-221(a)(18).

s. Well samples, logs or surveys which the state corporation commission requires to be filed. K.S.A. 45-221(a)(19).

t. Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed. K.S.A. 45-221(a)(20).

u. Records of a public agency having legislative powers pertaining to proposed legislation. K.S.A. 45-221(a)(21).

v. Records of a public agency having legislative powers, which pertain to research prepared for one or more members of such agency. K.S.A. 45-221(a)(22).

w. Library patron and circulation records. K.S.A. 45-221(a)(23).

x. Records which are compiled for census or research purposes. K.S.A. 45-221(a)(24).

y. Records which represent and constitute the work product of an attorney. K.S.A. 45-221(a)(25). Op.Atty.Gen. 87-149 (1987).

z. Records of a utility or other public service pertaining to individually identifiable residential customers. K.S.A. 45-221(a)(26).

aa. Specifications for competitive bidding. K.S.A. 45-221(a)(27).

bb. Sealed bids and related documents. K.S.A. 45-221(a)(28).

cc. Correctional records pertaining to an identifiable inmate. K.S.A. 45-221(a)(29). Op.Atty.Gen. 84-124 (1984). Op.Atty.Gen. 82-226 (1982).

dd. Public records where the public disclosure would constitute an invasion of personal privacy. K.S.A. 45-221(a)(30). Op.Atty.Gen. 89-50. Op.Atty.Gen. 92-149 (1992).

ee. Public records pertaining to prospective location of a business or industry. K.S.A. 45-221(a)(31).

ff. Engineering and architectural estimates made by or for any public agency relative to public improvements. K.S.A. 45-221(a)(32).

gg. Financial information submitted by contractors. K.S.A. 45-221(a)(33).

hh. Records of intellectual property rights vested in state institutions. K.S.A. 45-221(a)(34).

ii. Peer review, impaired provider, and risk management records of health care providers. K.S.A. 45-221(a)(35).

jj. Records revealing the precise location of an archeological site. K.S.A. 45-221(a)(36).

kk. Certain railroad records on sale, lease or rehabilitation of property in Kansas given to public agencies. K.S.A. 45-221(a)(37).

ll. Risk-based capital reports and capital plans, corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 40-2c20, and amendments thereto. K.S.A. 45-221(a)(38).

mm. Memoranda and related materials supporting the annual actuarial opinions submitted pursuant to K.S.A. 40-409(b), and amendments thereto. K.S.A. 45-221(a)(39).

nn. Disclosure reports filed with the commissioner of insurance pursuant to K.S.A. 40-2,156(a) and amendments thereto. K.S.A. 45-221(a)(40).

oo. All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system. K.S.A. 45-221(a)(41).

pp. Any records for which disclosure is restricted or prohibited by a tribal-state gaming compact. K.S.A. 45-221(a)(42).

qq. Market research and plans, business plans and the terms and conditions of managed care or other third party contracts, developed or entered into by the University of Kansas Medical Center in the management and operation of the university hospital which the chan-

cellor of the University of Kansas or the chancellor's designee determines would give an unfair advantage to competitors of the University of Kansas Medical Center. K.S.A. 45-221(a)(43).

ss. Amount of franchise tax paid to the secretary of state by corporations. K.S.A. 44-221(a)(44).

tt. Substantial likelihood of revealing security measures of energy, water, communications, sewer and waste infrastructures. K.S.A. 45-221(a)(45).

uu. Military discharge documents (DD Form 214) recorded at a Register of Deeds. (K.S.A. 45-221(a)(46).

vv. Information on location of shelters or safehouses for victims of abuse. K.S.A. 45-221(a)(47).

ww. Policy information provided by an insurance carrier listing covered individuals under group-funded worker's compensation insurance. K.S.A. 45-221(a)(48).

xx. An individual's e-mail, cell phone number, and other contact information given to a public agency for the purpose of public agency notifications which are widely distributed to the public. K.S.A. 45-221(a)(49).

B. Other statutory exclusions.

Any other statute which specifically restricts disclosure takes precedence over the KORA. K.S.A. 45-221(a)(1). The Revisor of Statutes has identified over 350 such other statutes. There are no Kansas statutes, case law, or other provisions which provide for the overriding of KORA but there is precedent for further restricting it.

1. K.S.A. 84-9-411 has been repealed and the UCC now requires the filing office to offer to sell or license to the public on a non-exclusive basis, in bulk, copies of all its filed records, in every medium from time to time. 84-9-523(g).

2. K.S.A. 9-1712 provides for the confidentiality of all information gathered or recorded by the bank commissioner in the investigation or examination on any bank. Op.Atty.Gen. 83-112 (1983).

3. Previous legislation has been replaced by K.S.A. 8-1560d, changing which speed violations are public.

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

A public agency is not required to disclose records the disclosure of which is prohibited or restricted by federal law, state statute, or rule of the Kansas Supreme Court. K.S.A. 45-221(a)(1). Pending litigation does not itself transform Kansas Department of Transportation records into confidential or privileged communications. Op.Atty.Gen. 95-12 (1995).

D. Are segregable portions of records containing exempt material available?

A public agency shall delete the identifiable portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to KORA. The agency is not required to disclose portions of records pertaining to a specific individual or such a limited group that the individual identities are reasonably ascertainable. K.S.A. 45-221(d). *State ex rel. Stephen v. Harder*, 230 Kan. 573, 641 P.2d 366 (1982). (May delete attorneys' Social Security numbers, Op.Atty.Gen. 87-168 (1987)), (May delete certain tax information and court settlements from financial statements, Op.Atty.Gen. 83-49 (1983), (May delete confidential information from permanent records of specified crimes, Op.Atty.Gen. 82-226 (1982)); (May delete any victim specific or identifying information from police records involving a sexual assault, Op.Atty.Gen. 92-149 (1992)); (the name, address, phone number, and financial information of a taxpayer contained in real estate appraisal information should be deleted before disclosing any remaining portions, Op.Atty.Gen. 94-96 (1994)).

E. Homeland Security Measures.

Substantial likelihood of revealing security measures of energy, water, communications, sewer and waste infrastructures. K.S.A. 45-221(a)(42).

III. STATE LAW ON ELECTRONIC RECORDS

A. Can the requester choose a format for receiving records?

Any person has the right to obtain a computerized voter registration list in computer format if the public agency has the capability of providing such record in computer format. Op.Atty.Gen 88-152 (1988) See also K.S.A. 45-501.

B. Can the requester obtain a customized search of computer databases to fit particular needs?

Not specifically addressed. A customized search may presumably occur if the public agency has the capability of providing such computer technology subject to appropriate fees.

C. Does the existence of information in electronic format affect its openness?

The Kansas Attorney General opines that the form of a public record, computerized or hard copy, does not alter the applicability of the Kansas Open Records Act, K.S.A. 42-217(f)(1). Op.Atty.Gen. 95-64 (1995).

D. How is e-mail treated?

E-mail can be "public record" under KORA, but e-mail between city commissioners not through city resources is not protected. Ag.Op. 2002-1.

1. Does e-mail constitute a record?

E-mail may be subject to KORA if the electronic record in question meets the definition of public record in K.S.A. 45-217(f)(1).

5. Private matter on private e-mail

E-mail messages written by public officials and sent on personal computers that do not go through public agency servers are not public records.

E. How are text messages and instant messages treated?

No applicable law.

F. How are social media postings and messages treated?

No applicable law.

G. How are online discussion board posts treated?

No applicable law.

H. Computer software

A public agency is not required to disclose software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register that is open to the public which describes: (1) the information which the agency maintains on computer facilities, and (2) the form in which this information can be made available using the existing computer programs. K.S.A. 45-221(a)(16).

I. How are fees for electronic records assessed?

Fees for providing access to records maintained on computer facilities shall include only the cost of any computer services, including the staff time required. K.S.A. 45-219(c)(2).

J. Money-making schemes.

1. Revenues.

The Secretary of Revenue is authorized to fix, charge and collect fees to provide access to or to furnish copies of public data in the Vehicle Information Processing System (VIPS), the Kansas Computer

Assisted Mass Appraisal System (KS CAMA) and other electronic database systems of the Department of Revenue. These fees shall be in the amount to recover all or part of the costs incurred in providing access to or furnishing copies of the data that is stored or maintained on such system. K.S.A. 74-2022.

2. Geographic Information Systems.

Not addressed.

K. On-line dissemination.

No applicable law.

IV. RECORD CATEGORIES -- OPEN OR CLOSED

A. Autopsy reports.

Coroner's records are subject to disclosure under KORA. *Burroughs v. Thomas*, 937 P.2d 12 (Ct. App. Kan. 1997).

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

Fire inspection records are subject to public disclosure. *City of Topeka v. Stauffer Communications, Inc.*, 642 P.2d 120, 122 (Ct. App. Kan. 1982).

C. Bank records.

K.S.A. 9-1712 provides for the confidentiality of all information gathered or recorded by the bank commissioner in the investigation or examination on any bank. Op.Atty.Gen. 83-112 (1983). See also Op.Atty.Gen. 78-67 (1978) which states that only those records derived from examination of a bank pursuant to K.S.A. 9-804 are confidential. Information contained in articles of incorporation and the application for a certificate of authority are open for inspection. *Id.*

D. Budgets.

No applicable law.

E. Business records, financial data, trade secrets.

Public records pertaining to prospective location of a business or industry are exempt from disclosure under K.S.A. 45-221(a)(31). Well samples, logs or surveys which the state corporation commission requires to be filed are exempt from disclosure under K.S.A. 45-221(a)(19). Market research and plans, business plans and the terms and conditions of managed care or other third party contracts, developed or entered into by the University of Kansas Medical Center are also exempt under K.S.A. 45-221(a)(43).

Disclosure of financial records of public grain elevators applying for licenses is mandated under KORA, Op.Atty.Gen. 83-49 (1983). A settlement agreement entered into by a city is a public record under KORA and therefore must be disclosed, Op.Atty.Gen. 93-55 (1993). Tax audit records are public records under KORA, but some information contained in such records may be confidential and disclosure is prohibited by K.S.A. 79-3234, Op.Atty.Gen. 95-6 (1995).

F. Contracts, proposals and bids.

The following are exempt from disclosure: plans, designs, drawings or specifications which are the property of a private person (K.S.A. 45-221(a)(18)); specifications for competitive bidding (K.S.A. 45-221(a)(27)); sealed bids and related documents (K.S.A. 45-221(a)(28)); the bidder's list of contractors (K.S.A. 45-221(a)(32)); and engineering and architectural estimates made by or for any public agency relative to public improvements (K.S.A. 45-221(a)(33)).

G. Collective bargaining records.

The records pertaining to employer-employee negotiation are exempt from disclosure. K.S.A. 45-221(a)(15). *But, c.f. State SRS v. PERB*, 249 Kan. 163, 815 P.2d 66 (1991).

H. Coroners reports.

Open for public inspection. Op.Atty.Gen. 86-5 (1986).

I. Economic development records.

No applicable law.

J. Election records.**1. Voter registration records.**

Voter registration records are public records. K.S.A. 45-230(a)(4).

K. Gun permits.

No applicable law.

L. Hospital reports.

Medical, psychiatric, psychological or alcoholism or drug dependency treatment records are exempt from disclosure. K.S.A. 45-221(a)(3); Op.Atty.Gen. 94-81(1994).

The following records are also exempt from disclosure: hospital personnel records (Op.Atty.Gen. 87-109 (1987)); hospital financial records (Op.Atty.Gen. 77-307 (1977)); peer review records (K.S.A. 65-4915(b)); "Reportable incidents" of health care providers (K.S.A. 65-4925); and certain licensing information (K.S.A. 65-436).

A nonprofit community mental health center under supervision and control of a county and the state department of social and rehabilitation services is a public agency under KORA and is subject to KORA requirements. Op.Atty.Gen. 94-111 (1994). However, state institutions for mentally retarded records are confidential. K.S.A. 76-12b11. Also, the records of community mental health or mental retardation facilities and psychiatric hospitals are privileged. K.S.A. 65-5602.

Municipal court cannot disclose a defendant's presentence alcohol and drug evaluations reports prepared by a person or entity receiving federal assistance to third parties absent consent from defendant or a court order pursuant to 42 U.S.C. § 290dd-2(b)(2)(C) and 42 C.F.R. § 2.61 *et seq.* Op.Atty.Gen. 94-150 (1994).

M. Personnel records.

Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy is exempted from the open records act. Op.Atty.Gen. 98-38.

1. Salary.

See K.S.A. 45-221(a)(4). Op.Atty.Gen. 87-109 (1987). Op.Atty.Gen. 91-50, 9-136, 92-132, 89-50, 94-121 (personnel records are exempt from disclosure). See also Op.Atty.Gen. 82-246 (1982); and Op.Atty.Gen. 81-267 (1981). Op.Atty.Gen. 92-132.

2. Disciplinary records.

See K.S.A. 45-221(a)(4). Op.Atty.Gen. 87-109 (1987). Op.Atty.Gen. 91-50, 9-136, 92-132, 89-50, 94-121 (personnel records are exempt from disclosure).

3. Applications.

Letters of reference or recommendation are not open to the public. K.S.A. 45-221(a)(6).

The state Department of Social & Rehabilitation services must give a union the addresses of employees. *State SRS v. PERB*, 249 Kan. 163, 815 P.2d 66 (1991). Op.Atty.Gen. 90-436 asserts addresses are discretionarily closed by Agency rule.

4. Personally identifying information.

Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy is excepted. K.S.A. 45-221(a)(30). The definition of "clearly unwarranted invasion of personal privacy" is in K.S.A. 45-217(b).

6. Other.

Performance records. Personnel records are exempt from disclosure. K.S.A. 45-221(a)(4); Op.Atty.Gen. 87-109 (1987); Op.Atty.Gen. 91-50, 9-136, 92-132, 89-50, 94-121.

An individual county commissioner may not examine personnel records which are otherwise not open for public inspection. However, if appropriate actions are taken as a board at an open meeting, an entire board of county commissioners may inspect county personnel records. Op.Atty.Gen. 94-121 (1994).

N. Police records.**1. Accident reports.**

Open to public. K.S.A. 45-217(b). See also Op.Atty.Gen. 79-17 (1979).

2. Police blotter.

Open to public. K.S.A. 45-217(b). The incident based reporting system code sheet used by law enforcement agencies is a public record that must be disclosed upon request. Op.Atty.Gen. 93-9 (1993).

3. 911 tapes.

Not specifically addressed, but presumably open unless part of a criminal investigation. K.S.A. 45-221(a)(10).

4. Investigatory records.

Investigatory records are generally closed to the public. However, a district court may order disclosure in an action brought under K.S.A. 45-222 (civil remedies to enforce KORA) if the court finds that disclosure: (1) is in the public interest; (2) would not interfere with any prospective law enforcement action; (3) would not reveal the identify of any confidential source or undercover agent; (4) would not reveal confidential investigation techniques or procedures not known to the general public; (5) would not endanger the life or physical safety of any person; and (6) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in Article 35 of Chapter 21 of the Kansas Statutes Annotated, and amendments thereto. K.S.A. 45-221(a)(10).

Criminal investigation files not concerning records of arrest, incarceration or conviction may be discretionarily opened under K.S.A. 45-221(a)(10). Op.Atty.Gen. 92-27 (1992).

Records compiled in the process of detecting, preventing or investigating violations of criminal law are not open. Mug shots are not open. Op.Atty.Gen. 87-25 (1987).

Disclosure of KBI reports to applicants for license under Kansas Parimutuel Racing Act is permissive under KPRA and Kansas Open Records Act, if K.S.A. 45-221(a)(10)(A-F) are followed. *Kansas Racing Management v. Kansas Racing Commission*, 244 Kan. 343, 770 P.2d 423 (1989).

a. Rules for active investigations.

See above. K.S.A. 45-221(a)(10), (11).

5. Arrest records.

Documents stating charges filed against individuals in municipal court and specifying scheduled court dates are open. Op.Atty.Gen. 87-145 (1987). Jail books listing persons in jail are open. Op.Atty.Gen. 87-25 (1987). However, correctional records pertaining to an identifiable inmate are exempt from disclosure. K.S.A. 45-221(a)(29). Op.Atty.Gen. 84-124 (1984). Op.Atty.Gen. 82-226 (1982).

6. Compilations of criminal histories.

Correctional records pertaining to an identifiable inmate are exempt from disclosure. K.S.A. 45-221(a)(29). Op.Atty.Gen. 84-124 (1984). Op.Atty.Gen. 82-226 (1982).

Permanent records of specified crimes are open. Op.Atty.Gen. 82-226 (1982); Op.Atty.Gen. 79-17 (1979). Conviction records required to be kept by statute are open. Op.Atty.Gen. 75-211 (1975).

Criminal records previously closed under a valid expungement order may not be disclosed to the victim, or anyone else, unless such person qualifies for access pursuant to K.S.A. 21-4619(i). Op.Atty.Gen. 92-27 (1992). Municipal court DUI diversion agreements are public records under KORA and must be disclosed upon request. Op.Atty.Gen. 94-7 (1994).

Juvenile offender records generally cannot be disclosed unless a K.S.A. 38-1608(a) statutory exception applies. Op.Atty.Gen. 95-94 (1995).

Information provided to the law enforcement officer as required by the sex offender registration act, K.S.A. 22-4901, *et seq.*, is open. K.S.A. 45-221(a)(29)(C).

7. Victims.

The name, address, phone number or any other information which would specifically identify the victim of a sexual offense, pursuant to K.S.A. 21-3501 *et seq.*, may not be revealed. K.S.A. 45-221(a)(10)(F). Information concerning other victims is not specifically addressed and is presumably open for inspection unless part of a criminal investigation. K.S.A. 45-221(a)(10). (Records compiled in contested case under the Crime Victims Reparations Board are open. Op.Atty.Gen. 82-28 (1982)); (Child abuse records are not open for public inspection. Op.Atty.Gen. 77-308 (1977)). In police records pertaining to a sexual assault, any victim specific or identifying information can be deleted from the record prior to any disclosure to prevent an unwarranted invasion of personal privacy, pursuant to K.S.A. 45-221(a)(30). Op.Atty.Gen. 92-149 (1992).

8. Confessions.

Not specifically addressed, but presumably open unless they are part of a criminal investigation. K.S.A. 45-221(a)(10).

9. Confidential informants.

The identity of an undercover agent or informant is confidential. K.S.A. 45-221(a)(5). The identity of a confidential informant may be deleted from open records kept by law enforcement personnel. Op.Atty.Gen. 82-226 (1982).

10. Police techniques.

Mentioned at K.S.A. 45-221(a)(10)(D). The presumption is that they are closed as part of a criminal investigation.

11. Mug shots.

Mug shots are not open. Op.Atty.Gen. 87-25 (1987).

12. Sex offender records.

Disclosure of sex offender information is public record available for disclosure so long as victim identifying information is not disclosed. K.S.A. 45-221(a)(29)(c)

13. Emergency medical services records.

Not addressed.

O. Prison, parole and probation reports.

Inmate rosters are open for public inspection. Op.Atty.Gen. 84-124 (1984). However, the correctional records pertaining to an identifiable inmate are exempt from disclosure. K.S.A. 45-221(a)(29). Op.Atty.Gen. 84-124 (1984). Op.Atty.Gen. 82-226 (1982).

P. Public utility records.

The records of a utility or other public service pertaining to individually identifiable residential customers are exempt from disclosure. K.S.A. 45-221(a)(26).

Q. Real estate appraisals, negotiations.

County appraiser's office must provide access to the database maintained in the office, provided that the records requested are open public records. A requester of such database may manipulate and repackage this information into a different format for sale as long as K.S.A. 21-3914 and K.S.A. 45-220(c) are followed. Op.Atty.Gen. 94-104 (1994); (Public land records are open for inspection. Op.Atty.Gen. 94-132 (1994)).

Tax assessment records are open. Op.Atty.Gen. 91-145.

1. Appraisals.

Exempted from open records act prior to the award of a contract. K.S.A. 45-221(a)(13).

4. Deeds, liens, foreclosures, title history.

Deeds, liens and foreclosure history are public records subject to disclosure. *Datatree, LLC v. Meek*, 109 P.3d 1226, 1233 (Kan. 2005).

R. School and university records.

1. Athletic records.

Not specifically addressed. Presumably open for inspection, but may be pre-empted by federal law.

2. Trustee records.

Not specifically addressed. Presumably open for inspection, but may be pre-empted by federal law.

3. Student records.

Applications, financial statements and other information submitted in connection with applications for student financial assistance are exempt from disclosure. K.S.A. 45-221(a)(17). Other records are presumably open, but may be preempted by federal law.

4. Other.

Testing and examination materials are exempt from disclosure. K.S.A. 45-221(a)(9). Access to test results may be preempted by federal law.

S. Vital statistics.

Vital statistics are not available for public disclosure. K.S.A. 65-2422(d).

3. Death certificates.

Open. K.S.A. 91-87.

V. PROCEDURE FOR OBTAINING RECORDS

A. How to start.

1. Who receives a request?

The custodian receives requests to inspect records. If the person who receives the request is not the custodian of the public record requested, such person shall notify the requester and shall furnish the name and location of the custodian, if known or readily ascertainable. K.S.A. 45-218(c).

2. Does the law cover oral requests?

An agency may require a written request for inspection, but shall not otherwise require a request to be made in any particular form. K.S.A. 45-220(b).

a. Arrangements to inspect & copy.

A public agency may require a person desiring to inspect public records to notify the agency not more than 24 hours prior to the hours established for inspection and obtaining copies. Such notice shall not be required to be in writing. K.S.A. 45-220(d).

b. If an oral request is denied:**(1). How does the requester memorialize the refusal?**

If a request is denied, the custodian, upon request, shall provide a written statement of the grounds for denial. K.S.A. 45-218(d).

(2). Do subsequent steps need to be in writing?

The KORA does not require additional written steps; however, proof of requests may be necessary in enforcement actions under K.S.A. 45-222.

3. Contents of a written request.**a. Description of the records.**

A public agency shall not require that a request contain more information than the requester's name and address and the information necessary to ascertain the records to which the requester desires access and the requester's right of access to the records. K.S.A. 45-220(b).

b. Need to address fee issues.

Fee issues need not be addressed. K.S.A. 45-220(b).

c. Plea for quick response.

No plea for a quick response is necessary. A request must be acted upon as soon as possible, but not later than the third business day following the date the request is received. K.S.A. 45-218(d). "As soon as possible" means without undue delay, and immediately, if circumstances make that possible. *Stauffer Communications Inc. v. Hayes*, District Court of Jefferson Co., No. 87 C 66 (1987).

d. Can the request be for future records?

Requests for future records is not addressed.

B. How long to wait.**1. Statutory, regulatory or court-set time limits for agency response.**

The statutory time in which a request must be acted upon is as soon as possible, but not later than the third business day following the date the request is received. K.S.A. 45-218(d).

2. Informal telephone inquiry as to status.

Not addressed.

3. Is delay recognized as a denial for appeal purposes?

A delay is not recognized as a denial for appeal purposes. If the request is not granted immediately, the custodian is required to give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. K.S.A. 45-218(d).

4. Any other recourse to encourage a response.

Not addressed by statute.

C. Administrative appeal.

There are no provisions for appeal. A requester may proceed directly to the district court.

2. To whom is an appeal directed?**4. Contents of appeal letter.****D. Court action.****1. Who may sue?**

Any person aggrieved by a violation. K.S.A. 45-222(a). This includes the Attorney General and county and district attorneys.

2. Priority.

Suits under the act are assigned for hearing at the "earliest practicable date." K.S.A. 45-222(e).

3. Pro se.

A party may bring the action *pro se* since most of the burden of showing compliance is upon the custodian and agency. However, since K.S.A. 45-222(d) allows an award of attorney fees in favor of a prevailing agency on a showing of bad faith and no reasonable basis in fact of law, legal assistance would be advisable.

4. Issues the court will address:

The court may address any issue raised "to enforce the purpose" of the Act. K.S.A. 45-222(a).

5. Pleading format.

No particular format is specified; the action is a civil suit governed by K.S.A. Chapter 60.

6. Time limit for filing suit.

There is no provision for limitation of actions under K.S.A. 45-222(a). K.S.A. 60-512 is a three-year statute of limitations for "liability created by statutes," but depending upon the relief sought, a plaintiff should file a timely suit to avoid laches.

7. What court.

Suit is filed in District Court of any county where the records are located. K.S.A. 45-222(a).

8. Judicial remedies available.

Remedies include: injunction, mandamus or other appropriate order on application of any person. K.S.A. 45-222(a).

9. Litigation expenses.

Attorney fees are allowable to either party, if the denial or the request was not in good faith and without reasonable basis in fact or law, whereupon, fees are mandatory. K.S.A. 45-222(c) and (d).

10. Fines.

Fines are not allowable. K.S.A. 45-223.

11. Other penalties.

On an action by a prosecuting authority, a penalty up to \$500 may be assessed. K.S.A. 45-223.

E. Appealing initial court decisions.**1. Appeal routes.**

Appeal is to the Kansas Court of Appeals, then upon application for review (discretionary) to the Kansas Supreme Court.

2. Time limits for filing appeals.

Thirty days from final judgment.

3. Contact of interested amici.

Amicus briefs are allowed on application only. Sup. Ct. Rule 6.06. *Amici* are not permitted oral argument.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

F. Addressing government suits against disclosure.

Not specifically addressed.

Open Meetings

I. STATUTE -- BASIC APPLICATION.

A. Who may attend?

Any person. K.S.A. 75-4318(a).

B. What governments are subject to the law?

State, County and Municipal governments. K.S.A. 75-4318(a).

C. What bodies are covered by the law?

1. Executive branch agencies.

a. What officials are covered?

Only those who are members of a governing body. (Office of mayor is separate and distinct from the members of the council and, therefore, not covered by KOMA. Op. Atty. Gen. 86-110 (1986)).

b. Are certain executive functions covered?

A mayor who breaks a tie vote is not a member of the council voting unless expressly made a member by statute. Op. Atty. Gen. 86-110 (1986).

c. Are only certain agencies subject to the act?

No Kansas law excludes any specific agency except courts. K.S.A. 75-4318(a). However, the provisions of the open meetings law shall not apply:

(1) To any administrative body that is authorized by law to exercise quasi-judicial functions when such body is deliberating matters relating to a decision involving such quasi-judicial functions;

(2) To the parole board when conducting parole hearings or parole violation hearings held at a correctional institution.

(3) To any impeachment inquiry or other impeachment matter referred to any committee of the house of representatives prior to the report of such committee to the full house of representatives; and

(4) If otherwise provided by state or federal law or by rules of the Kansas senate or house of representatives.

2. Legislative bodies.

Covered by KOMA. K.S.A. 75-4318(a). K.S.A. 75-4319(b)(8). KOMA applies to legislative conference committee meetings. Op. Atty. Gen. 93-113 (1993).

3. Courts.

Excluded. K.S.A. 75-4318(a); (Supreme Court Nominating Committee is not subject to KOMA. Op. Atty. Gen. 82-254 (1982)).

4. Nongovernmental bodies receiving public funds or benefits.

Covered by KOMA, K.S.A. 75-4318(a); Hospital Board of Trustees are subject to KOMA. Op. Atty. Gen. 86-38 (1986); Memorial Hospital Ass'n is subject to KOMA. Op. Atty. Gen. 85-49 (1985); Private nursing home receiving public funds is not subject to KOMA. Op. Atty. Gen. 79-221 (1979); McPherson County Diversified Services Inc. is subject to KOMA. Op. Atty. Gen. 79-284 (1979); Mid-America Commercialization Corporation is not subject to KOMA. Op. Atty. Gen. 94-99 (1994); Kansas Venture Capital Inc. is not subject to KOMA. Op. Atty. Gen. 94-107 (1994); Southwest Developmental Services Inc. is subject to KOMA. Op. Atty. Gen. 94-111 (1994).

5. Nongovernmental groups whose members include governmental officials.

Those receiving or expending public funds and supported in whole or in part by public funds are subject to KOMA, K.S.A. 75-4318(a); (Garden City/Finney County Alcohol Fund Advisory Committee is subject to KOMA. Op. Atty. Gen. 80-201 (1980)). Op. Atty. Gen. 91-

150. A political party precinct committee is not an administrative or legislative agency of state or local government and is not subordinate to such a body. Such a committee is not subject to KOMA. Op. Atty. Gen. 94-157 (1994).

6. Multi-state or regional bodies.

Those receiving or expending public funds and supported in whole or in part by public funds are subject to KOMA, K.S.A. 75-4318(a).

7. Advisory boards and commissions, quasi-governmental entities.

Such an entity is subject to KOMA if it:

a. is a body or agency within the meaning of the act; and

b. has legislative or administrative powers or at least is legislative or administrative in its method of conduct; and

c. must be a governmental entity at the state or local level, whether it is the governing body or some subordinate group; and

d. must receive or expend public funds or be a subordinate group of a body subject to the Act; and

e. must be supported in whole or in part by public funds or be a subordinate group of a body which is so financed. *State ex rel, Murray v. Palmgren*, 231 Kan. 524, 535, 646 P.2d 1091 (1982); Smoot and Clothier, *Open Meetings Profile: The Prosecutor's View*, 20 Washburn L.J. at 256-57; Op. Atty. Gen. 86-84 (1986); Op. Atty. Gen. 93-41 (1993); Op. Atty. Gen. 93-73 (1993); Op. Atty. Gen. 93-130 (1993). Governor-Elect advisory groups were held not subject to KOMA. *Associated Press v. Sebelius*, 31 Kan.App.2d. 1107, 78 P.3d 486 (2003).

8. Other bodies to which governmental or public functions are delegated.

Any legislative or administrative body or subordinate group thereof receiving or expending funds and supported in whole or in part by public funds with the exception of those performing quasi-judicial functions. K.S.A. 75-4318(a).

9. Appointed as well as elected bodies.

Both appointed and elected bodies are subject to the Act if they meet the standards set out for advisory, commissions, or other bodies to which government functions are delegated. Op. Atty. Gen. 94-55 (1994).

D. What constitutes a meeting subject to the law.

1. Number that must be present.

a. Must a minimum number be present to constitute a "meeting"?

Majority must be present. K.S.A. 75-4317a. In 2009, the legislature addressed "serial meetings" i.e., communications involving less than a majority of the members of an agency, but which collectively resulted in at least a majority involvement. Interactive communications now must be open if they 1) collectively involve a majority of the members; 2) share a common topic or discussions of the agency's affairs; 3) are intended by any or all participants to reach agreement in a matter that would require binding action. K.S.A. 75-4318(f).

b. What effect does absence of a quorum have?

KOMA does not apply and no official action may be taken without a quorum. K.S.A. 75-4317a; Op. Atty. Gen. 86-110 (1986).

2. Nature of business subject to the law.

a. "Information gathering" and "fact-finding" sessions.

Work sessions of a city council are subject to the Act. Op. Atty. Gen. 80-197 (1980). Fact finding board is subject to the Act, *Coggins v. Pub-*

lic Employee Relations Board, 2 Kan. App. 2d 416, 581 P.2d 817 (1978); Op. Atty. Gen. 76343 (1976).

b. Deliberations toward decisions.

These are subject to the Act. *Coggins v. Public Employee Relations Board*, 2 Kan. App. 2d 416, 581 P.2d 817 (1978); Op. Atty. Gen. 80-197 (1980).

3. Electronic meetings.

School board members may violate KOMA if three (a majority of the quorum) or more members simultaneously engage in interactive discussion of board business through the use of computers. K.S.A. 75-4317, *et seq.* However, the sending of electronic mail to other board members, standing alone, does not constitute “interactive communications” under KOMA. Op. Atty. Gen. 95-13 (1995). *Bit see 1.D.1. above.*

a. Conference calls and video/Internet conferencing.

Telephone meetings are within the definition of “meeting” in K.S.A. 75-4317a.

b. E-mail.

E-mail alone is not considered “interactive communication.” Op. Atty. Gen. 95-13(1995).

e. Social media and online discussion boards.

Interactive communication, for the purposes of KOMA, requires a mutual or reciprocal exchange between or among members of a body or agency subject to KOMA. Op. Atty. Gen. 2009-22.

E. Categories of meetings subject to the law.

1. Regular meetings.

a. Definition.

“Any gathering, assembly, telephone call or any other means of interactive communication by a majority of a quorum of the membership of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency.” K.S.A. 75-4317a. Telephone calls between county commissioners were not “meetings” under the prior statutes. *State Ex Rel. Stephan v. Board of County Commissioners of Seward County*, 254 Kan. 446, 866 P.2d 1024 (1994).

b. Notice.

(1). Time limit for giving notice.

The law does not set a time limit.

(2). To whom notice is given.

“Any person requesting.” K.S.A. 75-4318(b).

(3). Where posted.

Notice furnished to an executive officer of an employee’s organization or trade association is deemed notice to the entire membership, K.S.A. 4318(b)(2). (Publication of notice in Kansas Register is adequate notice to those persons subscribing to that publication. Op. Atty. Gen. 82-141 (1982)). (Notice requirements are met by making agenda available at city building during business hours and by mailing copies to those requesting. Op. Atty. Gen. 79-218 (1979)). (Does not have to be mailed if available at public place. Op. Atty. Gen. 86-113 (1986)). An appropriate notice under the circumstances regarding legislative conference committee meeting must be given to any person requesting a notice. Op. Atty. Gen. 93-113 (1993).

(4). Public agenda items required.

The Act does not require an agenda be prepared, but if one is prepared, it must be available to those requesting. K.S.A. 75-4318(d); *Stevens v. City of Hutchinson*, 11 Kan. App. 2d 290, 726 P.2d 279 (1986); Op. Atty. Gen. 78-281 (1978); Op. Atty. Gen. 77-337 (1977).

Stevens v. City of Hutchinson, 11 Kan. App. 2d 290, 726 P.2d 279 (1986); Op. Atty. Gen. 78-281 (1978); Op. Atty. Gen. 77-337 (1977).

(5). Other information required in notice.

None.

(6). Penalties and remedies for failure to give adequate notice.

Intentional violation subjects the violator to a possible civil penalty of not more than \$500. Any binding action taken at any such meeting held in violation of the provisions of the Act is voidable. K.S.A. 75-4320(a).

c. Minutes.

(1). Information required.

Not specifically addressed with respect to regular meetings, but specific information is required in minutes of closed meetings or executive sessions.

(2). Are minutes public record?

Yes. KORA. K.S.A. 45-214. Public records discussed in an open meeting, pursuant to KOMA, must be disclosed even though such records might otherwise be permissibly closed under KORA. (K.S.A. 45-221(a)(4)) involving personnel records and performance ratings. Op. Atty. Gen. 92-132 (1992).

2. Special or emergency meetings.

a. Definition.

None given by law.

b. Notice requirements.

(1). Time limit for giving notice.

No specified time limit. Notice must be given; not limited to situations where notice is possible. Op. Atty. Gen. 81-15 (1981).

(2). To whom notice is given.

To any person requesting. K.S.A. 75-4318(b). Op. Atty. Gen. 78-132 (1978); Op. Atty. Gen. 77-337 (1977).

(3). Where posted.

Notice furnished to an executive officer of an employee’s organization or trade association is deemed notice to the entire membership, K.S.A. 4318(b)(2). (Publication of notice in Kansas Register is adequate notice to those persons subscribing to that publication. Op. Atty. Gen. 82-141 (1982)). (Notice requirements are met by making agenda available at city building during business hours and by mailing copies to those requesting. Op. Atty. Gen. 79-218 (1979)). (Does not have to be mailed if available at public place. Op. Atty. Gen. 86-113 (1986)). An appropriate notice under the circumstances regarding legislative conference committee meeting must be given to any person requesting a notice. Op. Atty. Gen. 93-113 (1993).

(4). Public agenda items required.

Act does not require an agenda be prepared, but if one is prepared, it must be available to those requesting. K.S.A. 75-4318(d); *Stevens v. City of Hutchinson*, 11 Kan. App. 2d 290, 726 P.2d 279 (1986); Op. Atty. Gen. 78-281 (1978); Op. Atty. Gen. 77-337 (1977).

(5). Other information required in notice.

None.

(6). Penalties and remedies for failure to give adequate notice.

Intentional violation subjects the violator to a possible civil penalty of not more than \$500. Any binding action taken at any such meet-

ing held in violation of the provisions of the Act is voidable. K.S.A. 75-4320(a).

c. Minutes.

(1). Information required.

Not specifically addressed with respect to special meetings.

(2). Are minutes a public record?

Yes. KORA. K.S.A. 45-214. Public records discussed in an open meeting, pursuant to KOMA, must be disclosed even though such records might otherwise be permissibly closed under KORA. (K.S.A. 45-221(a)(4)) involving personnel records and performance ratings. Op. Atty. Gen. 92-132 (1992).

3. Closed meetings or executive sessions.

a. Definition.

A meeting can be recessed to a closed session to discuss personnel matters of non-elected officials, privileged attorney-client matters, employer-employee negotiations, confidential financial or trade secrets, student disciplinary matters, preliminary discussions of real estate acquisitions, security of public buildings and personnel, and tribal-gaming compacts, security measures and records regarding child care facilities, maternity care and family daycare facilities. No official action may be taken at closed meetings. K.S.A. 75-4319.

A public agency may permit individuals who will assist with discussion in an executive session. However, "mere observers" cannot attend executive sessions. Op. Atty. Gen. 92-56 (1992).

b. Notice requirements.

(1). Time limit for giving notice.

No specified time limit. Notice must be given; not limited to situations where notice is possible. Op. Atty. Gen. 81-15 (1981).

(2). To whom notice is given.

To any person requesting. K.S.A. 75-4318(b); Op. Atty. Gen. 81-22 (1981); Op. Atty. Gen. 81-268 (1981).

(3). Where posted.

Notice furnished to an executive officer of an employee's organization or trade association is deemed notice to the entire membership, K.S.A. 4318(b)(2). (Publication of notice in Kansas Register is adequate notice to those persons subscribing to that publication. Op. Atty. Gen. 82-141 (1982)). (Notice requirements are met by making agenda available at city building during business hours and by mailing copies to those requesting. Op. Atty. Gen. 79-218 (1979)). (Does not have to be mailed if available at public place. Op. Atty. Gen. 86-113 (1986)). An appropriate notice under the circumstances regarding legislative conference committee meeting must be given to any person requesting a notice. Op. Atty. Gen. 93-113 (1993).

(4). Public agenda items required.

Minutes must reflect the justification for closing the meeting, the subjects to be discussed during the closed session, and the time and place at which the open meeting shall resume. K.S.A. 75-4319(a); Op. Atty. Gen. 88-33 (1986).

(5). Other information required in notice.

None.

(6). Penalties and remedies for failure to give adequate notice.

Intentional violation subjects the violator to a possible civil penalty of not more than \$500. Any binding action taken at any such meeting held in violation of the provisions of the Act is voidable. K.S.A.

75-4320(a).

c. Minutes.

(1). Information required.

There are no requirements for minutes except as set forth in K.S.A. 75-4319(a) which requires that minutes reflect the justification for closing the meeting, the subjects to be discussed during the closed meeting, and the time and place at which the open meeting will resume. Op. Atty. Gen. 91-78.

(2). Are minutes a public record?

Only those minutes reflecting requirements of K.S.A. 75-4319(a) (showing justification for closing the meeting) are public, otherwise minutes of executive session are not open to public inspection. KORA, K.S.A. 45-201 et. seq.

d. Requirement to meet in public before closing meeting.

K.S.A. 75-4319(a) which requires that minutes reflect the reason for closing the meeting, the subjects to be discussed during the closed meeting, and the time and place that the open meeting will resume implies that an open meeting must be held prior to recessing for a closed meeting. Op. Atty. Gen. 86-33 (1986).

e. Requirement to state statutory authority for closing meetings before closure.

The reason for closing the meeting must be stated in the minutes. K.S.A. 75-4319(a).

f. Tape recording requirements.

None.

F. Recording/broadcast of meetings.

1. Sound recordings allowed.

Yes. K.S.A. 75-4318(e) subject to reasonable rules to ensure the orderly conduct of the proceedings at such meeting.

2. Photographic recordings allowed.

Yes. K.S.A. 75-4318(e) subject to reasonable rules to ensure the orderly conduct of the proceedings at such meeting.

G. Are there sanctions for noncompliance?

Any member who knowingly violates this act is liable in an amount not to exceed \$500 and any action taken is voidable. K.S.A. 75-4320.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

1. Character of exemptions.

a. General or specific.

Specific.

b. Mandatory or discretionary closure.

Mandatory clause. K.S.A. 75-4318(a).

2. Description of each exemption.

a. As otherwise provided by state or federal law or rules of the house or senate. K.S.A. 75-4318(a).

b. Impeachment inquiries or other impeachment matter referred to any committee of the house of representatives prior to the report of such committee to the full house of representatives. K.S.A. 75-4318(a).

c. Meetings held in deliberation of matters relating to any administrative body acting in a quasi-judicial function. K.S.A. 75-4318(a).

B. Any other statutory requirements for closed or open meetings.

None.

C. Court mandated opening, closing.

None.

III. MEETING CATEGORIES -- OPEN OR CLOSED.**A. Adjudications by administrative bodies.****1. Deliberations closed, but not fact-finding.**

K.S.A. 75-4318(a) specifically says that deliberations of quasi-judicial functions are closed. No law on fact-finding.

2. Only certain adjudications closed, i.e. under certain statutes.

All are closed. K.S.A. 75-4318(a).

B. Budget sessions.

Open to public. Op. Atty. Gen. 81-39 (1981). The consensus estimating group, which makes recommendations to the legislative budget committee, is an independent group with no statutory authority or duties in the exercise of its functions. The group is not under the guidance of any state agency and does not receive any public funds. Therefore, such group is not subject to KOMA. Op. Atty. Gen. 94-93 (1994).

C. Business and industry relations.

Not addressed by Kansas law.

D. Federal programs.

Not addressed by Kansas law.

E. Financial data of public bodies.

Open to public. Op. Atty. Gen. 81-39 (1981).

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

May be discussed in closed session. K.S.A. 75-4319(b)(4).

G. Gifts, trusts and honorary degrees.

Not addressed by Kansas law.

H. Grand jury testimony by public employees.

Closed unless directed otherwise by the court. K.S.A. 22-3012.

I. Licensing examinations.

Not addressed by Kansas law.

J. Litigation; pending litigation or other attorney-client privileges.

Attorney-client consultations may be closed. K.S.A. 75-4319(b)(2). An attorney must be present. Op. Atty. Gen. 78-303 (1978); Op. Atty. Gen. 86-162 (1986). The privilege may not be invoked if third parties are present during the communication. Op. Atty. Gen. 82-247 (1981); Op. Atty. Gen. 92-56 (1992). A city cannot take binding action on a settlement agreement during a closed or executive session. Op. Atty. Gen. 93-55 (1993).

K. Negotiations and collective bargaining of public employees.**1. Any sessions regarding collective bargaining.**

Collective bargaining may be discussed in a closed or executive meeting. K.S.A. 75-4319(b)(3). Op. Atty. Gen. 92-51

2. Only those between the public employees and the public body.

These can be closed whether or not they are in consultation with the body or agency. K.S.A. 75-4319(b)(3).

L. Parole board meetings, or meetings involving parole board decisions.

These are arguably closed since the parole board performs a quasi-judicial function, but practice in Kansas has been to allow public access where requested in advance. Tacha, *The Kansas Open Meeting Act; Sunshine on the Sunflower State?*, 25 U. Kans. L. Rev. 169, 183 (1977).

M. Patients; discussions on individual patients.

Not addressed.

N. Personnel matters.**1. Interviews for public employment.**

These may be closed to the public. K.S.A. 75-4319(b)(1).

2. Disciplinary matters, performance or ethics of public employees.

These may be closed to the public. K.S.A. 75-4319(b)(1); Op. Atty. Gen. 75-203 (1975); Op. Atty. Gen. 92-51 (1992). The purpose of the "personnel matters" exception within K.S.A. 75-4319(b)(1) is to protect privacy rights of employees, to save personal reputations, and encourage qualified people to seek governmental employment. *Walker v. Board of Education, USD No. 499*, 21 Kan. App. 2d 341, 900 P.2d 850 (1995).

3. Dismissal; considering dismissal of public employees.

These meetings may be closed to the public. K.S.A. 75-4319(b)(1).

O. Real estate negotiations.

Preliminary discussions relating to acquisitions of public land may be closed to public. K.S.A. 75-4319(b)(6); Op. Atty. Gen. 87-91 (1987); Op. Atty. Gen. 75-203 (1975). Discussion relating to the sale of public land are open to the public. Op. Atty. Gen. 87-91 (1987). A private corporation supporting "the well-planned development of land along Kansas Highway 10" is not a public agency within the meaning of KOMA due to the lack of governmental control and influence. Op. Atty. Gen. 94-42 (1994).

P. Security, national and/or state, of buildings, personnel or other.

This meeting type may be closed to the public. K.S.A. 75-4319(b)(13).

Q. Students; discussions on individual students.

This meeting may be closed to the public unless requested by the student to be made open. K.S.A. 75-4319(b)(5).

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS**A. When to challenge.****1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?**

No procedure is specified to be used directly with the agency. Injunction or mandamus is allowed under K.S.A. 75-4320a when requests before the agency have been denied.

2. When barred from attending.

A demand to comply with the KOMA is never too late and can be made seconds before the meeting is held, unless the issue is notice of the meeting. K.S.A. 75-4318 requires that notice of a meeting be requested before it is required to be given (Note that other organiza-

tional statutes and ordinances require notice of meetings to be published without interconnection to KOMA).

3. To set aside decision.

No procedure for this is specified in the KOMA. Officials are frequently unaware of any violations of the KOMA and will cooperate when the error is presented particularly with an attorney's demand. Calls to county or district attorneys are usually unproductive. The Kansas Attorney General will intervene, but only where the district attorney has failed or refused to act. Experience has shown private attorneys to be more successful in forcing agencies to comply. Time is critical when an attempt to set aside a decision is to be made because of the 10-day limitation of K.S.A. 75-4320(a). Binding action taken in a meeting that violates the open meetings act is voidable in an action brought by district attorney or attorney general within 21 days of the meeting. K.S.A. 75-4320.

4. For ruling on future meetings.

Experience has not shown agency officials to willingly establish and abide by guidelines for future meetings. Threatened legal action is usually required. Perceived determination of the reporter or other person seeking access is essential. Officials sometimes respond to ideological arguments for openness.

B. How to start.

1. Where to ask for ruling.

a. Administrative forum.

No provision.

b. State attorney general.

Attorney general or county and district attorneys have exclusive power to seek penalties or to void actions. K.S.A. 75-4320. Otherwise, "any person" may sue. K.S.A. 75-4320a.

c. Court.

Jurisdiction to enforce purposes of act vested in district court. K.S.A. 75-4320a.

2. Applicable time limits.

A demand to comply with the KOMA is never too late and can be made seconds before the meeting is held, unless the issue is notice of the meeting. K.S.A. 75-4318 requires that notice of a meeting be requested before it is required to be given (Note that other organizational statutes and ordinances require notice of meetings to be published without interconnection to KOMA).

Experience has not shown agency officials to willingly establish and abide by guidelines for future meetings. Threatened legal action is usually required. Perceived determination of the reporter or other person seeking access is essential. Officials sometimes respond to ideological arguments for openness.

3. Contents of request for ruling.

No provision.

4. How long should you wait for a response?

No provision.

5. Are subsequent or concurrent measures (formal or informal) available?

No provision.

C. Court review of administrative decision.

1. Who may sue?

The attorney general or county and district attorneys have exclusive power to seek penalties or to void actions. K.S.A. 75-4320. Otherwise,

"any person" may sue. K.S.A. 75-4320a.

2. Will the court give priority to the pleading?

Yes. K.S.A. 75-4320a(e) provides that action shall take precedence over all other cases except as otherwise provided by law.

3. Pro se possibility, advisability.

A person may proceed *pro se*, but K.S.A. 75-4320a(d) provides for the award of costs to a defendant if an action is frivolous, not in good faith or without reasonable basis in fact or law.

4. What issues will the court address?

a. Open the meeting.

Yes. K.S.A. 75-4320a.

b. Invalidate the decision.

Yes. K.S.A. 75-4320(a).

c. Order future meetings open.

Yes. K.S.A. 75-4320a.

5. Pleading format.

No provisions. Action governed by K.S.A. Chapter 60.

6. Time limit for filing suit.

KOMA contains no period of limitations. K.S.A. 60-514 is a one-year statute of limitation on actions for statutory penalties.

7. What court.

An action can be brought in the district court of the county "in which meeting is held." K.S.A. 75-4320a(a). K.S.A. 60-512 is a three-year statute of limitations for "liability created by statute."

8. Judicial remedies available.

Injunction, mandamus or other appropriate order, K.S.A. 75-4320a(a); civil penalties and injunction or mandamus under K.S.A. 75-4320(a).

9. Availability of court costs and attorneys' fees.

Costs available under 75-4320a(c). No provision for attorney fees.

10. Fines.

Up to \$500 per violation under K.S.A. 75-4320(a).

11. Other penalties.

None.

D. Appealing initial court decisions.

1. Appeal routes.

Appeal is to the Kansas Court of Appeals, then upon application for review (discretionary) to the Kansas Supreme Court. K.S.A. 60-2101.

2. Time limits for filing appeals.

Thirty days from final judgment. K.S.A. 60-2101(d).

3. Contact of interested amici.

Amicus briefs are allowed on application only. Sup. Ct. Rule 8.06. *Amici* are not permitted oral argument.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

V. ASSERTING A RIGHT TO COMMENT.

There is no statutory right to comment.

Statute

Open Records

CHAPTER 45.—PUBLIC RECORDS, DOCUMENTS AND INFORMATION

ARTICLE 2.—RECORDS OPEN TO PUBLIC

45-215. Title of act.

K.S.A. 45-215 through 45-223 shall be known and may be cited as the open records act.

45-216. Public policy that records be open.

(a) It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy.

(b) Nothing in this act shall be construed to require the retention of a public record nor to authorize the discard of a public record.

45-217. Definitions.

As used in the open records act, unless the context otherwise requires:

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

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

(c) ‘Criminal investigation records’ means records of an investigatory agency or criminal justice agency as defined by K.S.A. 22-4701 and amendments thereto, compiled in the process of preventing, detecting or investigating violations of criminal law, but does not include police blotter entries, court records, rosters of inmates of jails or other correctional or detention facilities or records pertaining to violations of any traffic law other than vehicular homicide as defined by K.S.A. 21-3405 and amendments thereto.

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

(e) ‘Official custodian’ means any officer or employee of a public agency who is responsible for the maintenance of public records, regardless of whether such records are in the officer’s or employee’s actual personal custody and control.

(f)

(1) ‘Public agency’ means the state or any political or taxing subdivision of the state or any office, officer, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by the public funds appropriated by the state or by public funds of any political or taxing subdivision of the state.

(2) ‘Public agency’ shall not include:

(A) Any entity solely by reason of payment from public funds for property, goods or services of such entity;

(B) any municipal judge, judge of the district court, judge of the court of appeals or justice of the supreme court; or

(C) any officer or employee of the state or political or taxing subdivision of the state if the state or political or taxing subdivision does not provide the officer or employee with an office which is open to the public at least 35 hours a week.

(f)

(1) [(g) (1)] ‘Public record’ means any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency including, but not limited to, an agreement in settlement of litigation involving the Kansas public employees retirement

system and the investment of moneys of the fund.

(2) ‘Public record’ shall not include records which are owned by a private person or entity and are not related to functions, activities, programs or operations funded by public funds or records which are made, maintained or kept by an individual who is a member of the legislature or of the governing body of any political or taxing subdivision of the state.

(3) ‘Public record’ shall not include records of employers related to the employer’s individually identifiable contributions made on behalf of employees for workers compensation, social security, unemployment insurance or retirement. The provisions of this subsection shall not apply to records of employers of lump-sum payments for contributions as described in this subsection paid for any group, division or section of an agency.

(h) ‘Undercover agent’ means an employee of a public agency responsible for criminal law enforcement who is engaged in the detection or investigation of violations of criminal law in a capacity where such employee’s identity or employment by the public agency is secret.

45-218. Inspection of records; request; response; refusal, when; fees.

(a) All public records shall be open for inspection by any person, except as otherwise provided by this act, and suitable facilities shall be made available by each public agency for this purpose. No person shall removal original copies of public records from the office of any public agency without the written permission of the custodian of the record.

(b) Upon request in accordance with procedures adopted under K.S.A. 45-220, any person may inspect public records during the regular office hours of the public agency and during any additional hours established by the public agency pursuant to K.S.A. 45-220.

(c) If the person to whom the request is directed is not the custodian of the public record requested, such person shall so notify the requester and shall furnish the name and location of the custodian of the public record, if known to or readily ascertainable by such person.

(d) Each request for access to a public record shall be acted upon as soon as possible, but not later than the end of the third business day following the date that the request is received. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. If the request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester not later than the end of the third business day following the date that the request for the statement is received.

(e) The custodian may refuse to provide access to a public record, or to permit inspection, if a request places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency. However, refusal under this subsection must be sustained by preponderance of the evidence.

(f) A public agency may charge and require advance payment of a fee for providing access to or furnishing copies of public records, subject to K.S.A. 45-219.

45-219. Abstracts or copies of records; fees.

(a) Any person may make abstracts or obtain copies of any public record to which such person has access under this act. If copies are requested, the public agency may require a written request and advance payment of the prescribed fee. A public agency shall not be required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices, unless such items or devices were shown or played to a public meeting of the governing body thereof, but the public agency shall not be required to provide such items or devices which are copyrighted by a person other than the public agency.

(b) Copies of public records shall be made while the records are in the possession, custody and control of the custodian or a person designated by the custodian and shall be made under the supervision of such custodian or person. When practical, copies shall be made in the place where the records are kept. If it is impractical to do so, the custodian shall allow arrangements to be made for use of other facilities. If it is necessary to use other facilities for copying, the

cost thereof shall be paid by the person desiring a copy of the records. In addition, the public agency may charge the same fee for the services rendered in supervising the copying as for furnishing copies under subsection (c) and may establish a reasonable schedule of times for making copies at other facilities.

(c) Except as provided by subsection (f) or where fees for inspection or for copies of a public record are prescribed by statute, each public agency may prescribe reasonable fees for providing access to or furnishing copies of public records, subject to the following:

(1) In the case of fees for copies of records, the fees shall not exceed the actual cost of furnishing copies, including the cost of staff time required to make the information available.

(2) In the case of fees for providing access to records maintained on computer facilities, the fees shall include only the cost of any computer services, including staff time required.

(3) Fees for access to or copies of public records of public agencies within the legislative branch of the state government shall be established in accordance with K.S.A. 46-1207a and amendments thereto.

(4) Fees for access to or copies of public records of public agencies within the judicial branch of the state government shall be established in accordance with rules of the supreme court.

(5) Fees for access to or copies of public records of a public agency within the executive branch of the state government shall be established by the agency head. Any person requesting records may appeal the reasonableness of the fees charged for providing access to or furnishing copies of such records to the secretary of administration whose decision shall be final. A fee for copies of public records which is equal to or less than \$.25 per page shall be deemed a reasonable fee.

(d) Except as otherwise authorized pursuant to K.S.A. 75-4215 and amendments thereto, each public agency within the executive branch of the state government shall remit all moneys received by or for it from fees charged pursuant to this section to the state treasurer in accordance with K.S.A. 75-4215 and amendments thereto. Unless otherwise specifically provided by law, the state treasurer shall deposit the entire amount thereof in the state treasury and credit the same to the state general fund or an appropriate fee fund as determined by the agency head.

(e) Each public agency of a political or taxing subdivision shall remit all moneys received by or for it from fees charged pursuant to this act to the treasurer of such political or taxing subdivision at least monthly. Upon receipt of any such moneys, such treasurer shall deposit the entire amount thereof in the treasury of the political or taxing subdivision and credit the same to the general fund thereof, unless otherwise specifically provided by law.

(f) Any person who is a certified shorthand reporter may charge fees for transcripts of such person's notes of judicial or administrative proceedings in accordance with rates established pursuant to rules of the Kansas supreme court.

45-220. Procedures for obtaining access to or copies of records; request; office hours; provision of information on procedures.

(a) Each public agency shall adopt procedures to be followed in requesting access to and obtaining copies of public records, which procedures shall provide full access to public records, protect public records from damage and disorganization, prevent excessive disruption of the agency's essential functions, provide assistance and information upon request and insure efficient and timely action in response to applications for inspection of public records.

(b) A public agency may require a written request for inspection of public records but shall not otherwise require a request to be made in any particular form. Except as otherwise provided by subsection (c), a public agency shall not require that a request contain more information than the requester's name and address and the information necessary to ascertain the records to which the requester desires access and the requester's right of access to the records. A public agency may require proof of identity of any person requesting access to a public record. No request shall be returned, delayed or denied because of any technicality unless it is impossible to determine the records to which the requester desires access.

(c) If access to public records of an agency or the purpose for which the records may be used is limited pursuant to K.S.A. 45-221 or K.S.A. 2005 Supp. 45-230, and amendments thereto, the agency may require a person requesting the records or information therein to provide written certification that:

(1) The requester has a right of access to the records and the basis of that right; or

(2) the requester does not intend to, and will not: (A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or (B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed.

(d) A public agency shall establish, for business days when it does not maintain regular office hours, reasonable hours when persons may inspect and obtain copies of the agency's records. The public agency may require that any person desiring to inspect or obtain copies of the agency's records during such hours so notify the agency, but such notice shall not be required to be in writing and shall not be required to be given more than 24 hours prior to the hours established for inspection and obtaining copies.

(e) Each official custodian of public records shall designate such persons as necessary to carry out the duties of custodian under this act and shall ensure that a custodian is available during regular business hours of the public agency to carry out such duties.

(f) Each public agency shall provide, upon request of any person, the following information:

(1) The principal office of the agency, its regular office hours and any additional hours established by the agency pursuant to subsection (c).

(2) The title and address of the official custodian of the agency's records and of any other custodian who is ordinarily available to act on requests made at the location where the information is displayed.

(3) The fees, if any, charged for access to or copies of the agency's records.

(4) The procedures to be followed in requesting access to and obtaining copies of the agency's records, including procedures for giving notice of a desire to inspect or obtain copies of records during hours established by the agency pursuant to subsection (c).

45-221. Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open.

(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.

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

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

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

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

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

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

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation, except if the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public officer

or employee.

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

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

(A) Is in the public interest;

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

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

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

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

(F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

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

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

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

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

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

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

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

(A) The information which the agency maintains on computer facilities; and

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

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

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

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or produc-

tion of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

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

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

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

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

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

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

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

(23) Library patron and circulation records which pertain to identifiable individuals.

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

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(46) Any information or material received by the register of deeds of a county from military discharge papers (DD Form 214). Such papers shall be

disclosed: To the military dischargee; to such dischargee's immediate family members and lineal descendants; to such dischargee's heirs, agents or assigns; to the licensed funeral director who has custody of the body of the deceased dischargee; when required by a department or agency of the federal or state government or a political subdivision thereof; when the form is required to perfect the claim of military service or honorable discharge or a claim of a dependent of the dischargee; and upon the written approval of the commissioner of veterans affairs, to a person conducting research.

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

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

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

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

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

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

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

45-221a. Repealed.

45-221b. Repealed.

45-221c. Repealed.

45-221d. Repealed.

45-221e. Repealed.

45-221f. Repealed.

45-221g. Repealed.

45-222. Civil remedies to enforce act; attorney fees.

(a) The district court of any county in which public records are located shall have jurisdiction to enforce the purposes of this act with respect to such records, by injunction, mandamus or other appropriate order, in an action brought by any person, the attorney general or a county or district attorney.

(b) In any action hereunder, the court shall determine the matter de novo. The court on its own motion, or on motion of either party, may view the records in controversy in camera before reaching a decision.

(c) In any action hereunder, the court shall award costs and a reasonable sum

as an attorney's fee for services rendered in such action, including proceedings on appeal, to be recovered and collected as part of the costs to the plaintiff if the court finds that the agency's denial of access to the public record was not in good faith and without a reasonable basis in fact or law. The award shall be assessed against the public agency that the court determines to be responsible for the violation.

(d) In any action hereunder in which the defendant is the prevailing party, the court shall award to the defendant costs and a reasonable sum as an attorney's fee for services rendered in such action, including proceedings on appeal, to be recovered and collected as part of the costs if the court finds that the plaintiff maintained the action not in good faith and without a reasonable basis in fact or law.

(e) Except as otherwise provided by law, proceedings arising under this section shall be assigned for hearing and trial at the earliest practicable date.

(f) The provisions of subsections (c) and (d) concerning the awarding of costs and attorney fees for services rendered during an appeal shall apply only to actions which are based on causes of action accruing on or after July 1, 2004.

45-223. Civil penalties for violations.

(a) Any public agency subject to this act that knowingly violates any of the provisions of this act or that intentionally fails to furnish information as required by this act shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney, in a sum set by the court of not to exceed \$500 for each violation.

(b) Any civil penalty sued for and recovered hereunder by the attorney general shall be paid into the state general fund. Any civil penalty sued for and recovered hereunder by a county or district attorney shall be paid into the general fund of the county in which the proceedings were instigated.

45-224. Continuation of fees and procedures adopted under prior act.

All fees, schedules of times for making of copies, hours during which public records may be inspected or copies obtained, procedures for requesting access to or obtaining copies of public records or other policies or procedures which were prescribed or adopted by any public agency pursuant to chapter 171 of the session laws of 1983, insofar as the same are authorized or in accordance with the provisions of this act, shall constitute the fees, schedules, hours and policies or procedures of such public agency for the purposes of this act until changed, modified or revoked by the public agency in accordance with the provisions of this act.

45-225. Severability of provisions.

If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and, to this end, the provisions of this act are severable.

45-226. Local freedom of information officer.

(a) The governing body of every public agency in Kansas which maintains public records shall designate a local freedom of information officer.

(b) The local freedom of information officer or the local freedom of information officer's designee shall:

- (1) Prepare and provide educational materials and information concerning the open records act;
- (2) be available to assist the public agency and members of the general public to resolve disputes relating to the open records act;
- (3) respond to inquiries relating to the open records act;

(4) establish the requirements for the content, size, shape and other physical characteristics of a brochure required to be displayed or distributed or otherwise make available to the public under the open records act. In establishing such requirements for the content of the brochure, the local freedom of information officer shall include plainly written basic information about the rights of a requestor, the responsibilities of a public agency, and the procedures for inspecting and obtaining a copy of public records under the open records act.

(c) This section shall be a part of and supplemental to the Kansas open records act.

45-227. Brochure concerning public records.

(a) An official custodian shall prominently display or distribute or otherwise make available to the public a brochure in the form prescribed by the local freedom of information officer that contains basic information about the rights of a requestor, the responsibilities of a public agency, and the procedures for inspecting or obtaining a copy of public records under the open records act. The official custodian shall display or distribute or otherwise make available to the public the brochure at one or more places in the administrative offices of the governmental body where it is available to members of the public who request public information in person under this act.

(b) This section shall be a part of and supplemental to the Kansas open records act.

45-228. Investigation of alleged violations; powers.

In investigating alleged violations of the Kansas open records act, the attorney general or county or district attorney may:

- (a) Subpoena witnesses, evidence, documents or other material;
- (b) take testimony under oath;
- (c) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violations;
- (d) require attendance during such examination of documentary material and take testimony under oath or acknowledgment in respect of any such documentary material; and
- (e) serve interrogatories.

45-229. Legislative review of exceptions to disclosure; continuation of sections listed.

(a) It is the intent of the legislature that exceptions to disclosure under the open records act shall be created or maintained only if:

- (1) The public record is of a sensitive or personal nature concerning individuals;
- (2) the public record is necessary for the effective and efficient administration of a governmental program; or
- (3) the public record affects confidential information.

The maintenance or creation of an exception to disclosure must be compelled as measured by these criteria. Further, the legislature finds that the public has a right to have access to public records unless the criteria in this section for restricting such access to a public record are met and the criteria are considered during legislative review in connection with the particular exception to disclosure to be significant enough to override the strong public policy of open government. To strengthen the policy of open government, the legislature shall consider the criteria in this section before enacting an exception to disclosure.

(b) Subject to the provisions of subsection (h), all exceptions to disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and any new exception to disclosure or substantial amendment of an existing exception shall expire on July 1 of the fifth year after enactment of the new exception or substantial amendment, unless the legislature acts to continue the exception. A law that enacts a new exception or substantially amends an existing exception shall state that the exception expires at the end of five years and that the exception shall be reviewed by the legislature before the scheduled date.

(c) For purposes of this section, an exception is substantially amended if the amendment expands the scope of the exception to include more records or information. An exception is not substantially amended if the amendment narrows the scope of the exception.

(d) This section is not intended to repeal an exception that has been amended following legislative review before the scheduled repeal of the exception if the exception is not substantially amended as a result of the review.

(e) In the year before the expiration of an exception, the revisor of statutes shall certify to the president of the senate and the speaker of the house of representatives, by July 15, the language and statutory citation of each exception

which will expire in the following year which meets the criteria of an exception as defined in this section. Any exception that is not identified and certified to the president of the senate and the speaker of the house of representatives is not subject to legislative review and shall not expire. If the revisor of statutes fails to certify an exception that the revisor subsequently determines should have been certified, the revisor shall include the exception in the following year's certification after that determination.

(f) 'Exception' means any provision of law which creates an exception to disclosure or limits disclosure under the open records act pursuant to K.S.A. 45-221, and amendments thereto, or pursuant to any other provision of law.

(g) A provision of law which creates or amends an exception to disclosure under the open records law shall not be subject to review and expiration under this act if such provision:

- (1) Is required by federal law;
 - (2) applies solely to the legislature or to the state court system.
- (h)

(1) The legislature shall review the exception before its scheduled expiration and consider as part of the review process the following:

(A) What specific records are affected by the exception;

(B) whom does the exception uniquely affect, as opposed to the general public;

(C) what is the identifiable public purpose or goal of the exception;

(D) whether the information contained in the records may be obtained readily by alternative means and how it may be obtained;

(2) An exception may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exception and if the exception:

(A) Allows the effective and efficient administration of a governmental program, which administration would be significantly impaired without the exception;

(B) protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. Only information that would identify the individuals may be excepted under this paragraph; or

(C) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(3) Records made before the date of the expiration of an exception shall be subject to disclosure as otherwise provided by law. In deciding whether the records shall be made public, the legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exception of the type specified in paragraph (2)(B) or (2)(C) of this subsection (h) would occur if the records were made public.

(i) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) of this section on June 1, 2004, are hereby continued in existence until July 1, 2010, at which time such exceptions shall expire: 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 11-306, 12-189, 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16a-2-304, 17-1312e, 17-2227, 17-5832, 17-7503, 17-7505, 17-7511, 17-7514, 17-76,139, 19-4321, 21-2511, 22-3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312, 25-4161, 25-4165, 31-405, 34-251, 38-1508, 38-1520, 38-1565, 38-1609, 38-1610, 38-1618, 38-1664, 39-709b, 39-719e, 39-934, 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21, 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b, 40-3421, 40-3613, 40-3805, 40-4205, 44-510j, 44-550b, 44-594, 44-635, 44-714, 44-817, 44-1005, 44-1019, 45-221, 46-256, 46-259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406, 49-427, 55-1,102, 56-1a606, 56-1a607, 56a-1201, 56a-1202, 58-4114, 59-2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-3335, 60-3336, 65-102b, 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-

1,113, 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-1135, 65-1467, 65-1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-2839a, 65-2898a, 65-3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4608, 65-4922, 65-4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-67a05, 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203, 66-1220a, 66-2010, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-5427, 72-8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909, 74-50,131, 74-5515, 74-7308, 74-7338, 74-7405a, 74-8104, 74-8307, 74-8705, 74-8804, 74-9805, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362, 75-5133, 75-5266, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493, 76-12b11, 76-3305, 79-1119, 79-1437f, 79-15,118, 79-3234, 79-3395, 79-3420, 79-3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.

45-230. Unlawful use of names derived from public records.

(a) No person shall knowingly sell, give or receive, for the purpose of selling or offering for sale any property or service to persons listed therein, any list of names and addresses contained in or derived from public records except:

(1) Lists of names and addresses from public records of the division of vehicles obtained under K.S.A. 74-2012, and amendments thereto;

(2) lists of names and addresses of persons licensed, registered or issued certificates or permits to practice a profession or vocation may be sold or given to, and received by, an organization of persons who practice that profession or vocation for membership, informational or other purposes related to the practice of the profession or vocation;

(3) lists of names and addresses of persons applying for examination for licenses, registrations, certificates or permits to practice a profession or vocation shall be sold or given to, and received by, organizations providing professional or vocational educational materials or courses to such persons for the sole purpose of providing such persons with information relating to the availability of such materials or courses;

(4) lists of names, addresses and other information from voter registration lists may be compiled, used, given, received, sold or purchased by any person, as defined in K.S.A. 21-3110 and amendments thereto, solely for political campaign or election purposes;

(5) lists of names and addresses from the public records of postsecondary institutions as defined in K.S.A. 74-3201b, and amendments thereto, may be given to, and received and disseminated by such institution's separately incorporated affiliates and supporting organizations, which qualify under section 501(c)(3) of the federal internal revenue code of 1986, for use in the furtherance of the purposes and programs of such institutions and such affiliates and supporting organizations; and

(6) to the extent otherwise authorized by law.

(b) Any person subject to this section who knowingly violates the provisions of this section shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney in a sum set by the court not to exceed \$500 for each violation.

(c) The provisions of this section shall not apply to nor impose any civil liability or penalty upon any public official, public agency or records custodian for granting access to or providing copies of public records or information containing names and addresses, in good faith compliance with the Kansas open records act, to a person who has made a written request for access to such information and has executed a written certification pursuant to subsection (c) (2) of K.S.A. 45-220, and amendments thereto.

(d) This section shall be a part of and supplemental to the Kansas open records act.

45-231 to 45-239. Reserved.

45-240. Recordkeeping requirements for certain not-for-profit entities.

(a) Each not-for-profit entity that receives public funds in an aggregated amount of \$350 or more per year shall be required to document the receipt and expenditure of such funds. Subject to the provisions of subsection (b), each not-for-profit entity which receives public funds in an aggregated amount of \$350 or more per year, shall, upon request, make available to any requester a copy of documentation of the receipt and expenditure of such public funds received

by such not-for-profit entity. If such not-for-profit entity's accounting practice does not segregate public funds from other fund sources, the not-for-profit entity's entire accounting of its expenditures and receipts shall be open to the public. The reporting requirements of this section shall commence on the first day of the fiscal year of such not-for-profit entity which occurs on or after July 1, 2005, and continue for each fiscal year thereafter.

(b)

(1) Except as provided in paragraph (3), any not-for-profit entity that receives public funds that is required by law or the terms of a grant, contract or other agreement to file a written financial report which includes the receipt of public funds and the expenditure of such funds with an agency of the United States, an agency of this state or any political or taxing subdivision thereof, shall be deemed to have fulfilled the requirements of this section upon filing such report. Otherwise an itemized invoice or statement by the not-for-profit entity of the amount of public funds received and the expenditure therefor shall be deemed to have complied with the requirements of this section when such itemized invoice or statement is filed with an agency of the United States, an agency of this state or any political or taxing subdivision thereof, that provided the public funds to the not-for-profit entity.

(2) Any report referred to in paragraph (1) of this subsection, shall be deemed to be a public record of the agency of this state or any political or taxing subdivision thereof and subject to inspection or disclosure in accordance with the Kansas open records act.

(3) Any not-for-profit entity which receives public funds may file in the office of the secretary of state or make available for review in such not-for-profit entity's office, a copy of the detailed audit or accounting of public funds received by such not-for-profit entity.

(c) Each not-for-profit entity may charge and require advance payment of a reasonable fee for providing access to or furnishing copies of documentation of the receipt and expenditure of public funds as required by this section. Such fee shall be determined in the same manner as for a public agency pursuant to K.S.A. 45-219 and amendments thereto. A fee for copies of documentation of the receipt and expenditure of public funds which is equal to or less than \$.25 per page shall be deemed a reasonable fee.

(d) The provisions of this section shall not apply to any:

- (1) Health care provider;
- (2) individual person;
- (3) for profit corporation; or
- (4) partnership.

(e) For the purposes of this section:

(1) 'Health care provider' shall have the meaning ascribed to it in K.S.A. 65-4915 and amendments thereto. Health care provider shall also include any:

(A) Not-for-profit dental service corporation doing business in this state pursuant to K.S.A. 40-19a01 et seq. and amendments thereto;

(B) not-for-profit medical and hospital corporation doing business in this state pursuant to K.S.A. 40-19c01 et seq. and amendments thereto;

(C) indigent health care clinic as such term is defined in K.S.A. 75-6102 and amendments thereto; and

(D) adult care home as such term is defined in K.S.A. 39-923 and amendments thereto.

(2) 'Public funds' means any moneys received from the United States, the state of Kansas or any political or taxing subdivision thereof, or any officer, board, commission or agency thereof.

45-241 to 45-249. *Reserved.*

45-250. *Sunflower Foundation: Health Care for Kansas; subject to open records law.*

The Sunflower Foundation: Health Care for Kansas, established pursuant to the settlement agreement entered into by the attorney general in the action filed by Blue Cross and Blue Shield of Kansas, Inc., in the district court of Shawnee county, Kansas, case no. 97CV608, shall be and is hereby deemed to be a public agency and shall be subject to the open records law.

Open Meetings

Chapter 75.— State Departments; Public Officers And Employees

Article 43.— Public Officers And Employees

N Public Meetings

75-4317. Open meetings declared policy of state; citation of act.

(a) In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public.

(b) It is declared hereby to be against the public policy of this state for any such meeting to be adjourned to another time or place in order to subvert the policy of open public meetings as pronounced in subsection (a).

(c) K.S.A. 75-4317 through 75-4320a shall be known and may be cited as the open meetings act.

75-4317a. Meeting defined.

(a) As used in this act, "meeting" means any gathering, assembly, telephone call or any other means of interactive communication by a majority of a quorum of the membership of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency.

75-4318. Meetings of state and subdivisions open to public; exceptions; secret ballots; notice; agenda, cameras, photographic lights, recording devices.

(a) Subject to the provisions of subsection (f), all meetings for the conduct of the affairs of, and the transaction of business by, all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds shall be open to the public and no binding action by such bodies shall be by secret ballot. Meetings of task forces, advisory committees or subcommittees of advisory committees created pursuant to a governor's executive order shall be open to the public in accordance with this act.

(b) Notice of the date, time and place of any regular or special meeting of a public body designated hereinabove shall be furnished to any person requesting such notice, except that:

(1) If notice is requested by petition, the petition shall designate one person to receive notice on behalf of all persons named in the petition, and notice to such person shall constitute notice to all persons named in the petition;

(2) if notice is furnished to an executive officer of an employees' organization or trade association, such notice shall be deemed to have been furnished to the entire membership of such organization or association; and

(3) the public body may require that a request to receive notice must be submitted again to the body prior to the commencement of any subsequent fiscal year of the body during which the person wishes to continue receiving notice, but, prior to discontinuing notice to any person, the public body must notify the person that notice will be discontinued unless the person resubmits a request to receive notice.

(c) It shall be the duty of the presiding officer or other person calling the meeting, if the meeting is not called by the presiding officer, to furnish the notice required by subsection (b).

(d) Prior to any meeting hereinabove mentioned, any agenda relating to the business to be transacted at such meeting shall be made available to any person requesting said agenda.

(e) The use of cameras, photographic lights and recording devices shall not be prohibited at any meeting mentioned by subsection (a), but such use shall be subject to reasonable rules designed to insure the orderly conduct of the proceedings at such meeting.

(f) The provisions of the open meetings law shall not apply:

(1) To any administrative body that is authorized by law to exercise quasi-judicial functions when such body is deliberating matters relating to a decision involving such quasi-judicial functions;

(2) to the parole board when conducting parole hearings or parole violation hearings held at a correctional institution;

(3) to any impeachment inquiry or other impeachment matter referred to any committee of the house of representatives prior to the report of such committee to the full house of representatives; and

(4) if otherwise provided by state or federal law or by rules of the Kansas senate or house of representatives.

75-4319. Closed or executive meetings; conditions; authorized subjects for discussion; binding action prohibited; certain documents identified in meetings not subject to disclosure.

(a) Upon formal motion made, seconded and carried, all bodies and agencies subject to the open meetings act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed or executive meeting and (3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

(b) No subjects shall be discussed at any closed or executive meeting, except the following:

(1) Personnel matters of nonelected personnel;

(2) consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;

(3) matters relating to employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency;

(4) confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;

(5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person;

(6) preliminary discussions relating to the acquisition of real property;

(7) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 74-8804 and amendments thereto;

(8) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (d)(1) of K.S.A. 38-1507 and amendments thereto or subsection (e) of K.S.A. 38-1508 and amendments thereto;

(9) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (j) of K.S.A. 22a-243 and amendments thereto;

(10) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (e) of K.S.A. 44-596 and amendments thereto;

(11) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (g) of K.S.A. 39-7,119 and amendments thereto;

(12) matters required to be discussed in a closed or executive meeting pursuant to a tribal-state gaming compact;

(13) matters relating to security measures, if the discussion of such matters at an open meeting would jeopardize such security measures, that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; (C) a public body or agency, public building or facility or the information system of a public

body or agency; or (D) private property or persons, if the matter is submitted to the agency for purposes of this paragraph. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments; and

(14) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (f) of K.S.A. 65-525, and amendments thereto.

(c) No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.

(d) Any confidential records or information relating to security measures provided or received under the provisions of subsection (b)(13), shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

75-4319a. Repealed.

75-4319b. Repealed.

75-4320. Penalties.

(a) Any member of a body or agency subject to this act who knowingly violates any of the provisions of this act or who intentionally fails to furnish information as required by subsection (b) of K.S.A. 75-4318, and amendments thereto, shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney, in a sum set by the court of not to exceed \$500 for each violation. In addition, any binding action which is taken at a meeting not in substantial compliance with the provisions of this act shall be voidable in any action brought by the attorney general or county or district attorney in the district court of the county in which the meeting was held within 21 days of the meeting, and the court shall have jurisdiction to issue injunctions or writs of mandamus to enforce the provisions of this act.

(b) Civil penalties sued for and recovered hereunder by the attorney general shall be paid into the state general fund. Civil penalties sued for and recovered hereunder by a county or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

75-4320a. Enforcement of act by district courts; burden of proof; court costs; precedence of cases.

(a) The district court of any county in which a meeting is held shall have jurisdiction to enforce the purposes of K.S.A. 75-4318 and 75-4319, and amendments thereto, with respect to such meeting, by injunction, mandamus or other appropriate order, on application of any person.

(b) In any action hereunder, the burden of proof shall be on the public body or agency to sustain its action.

(c) In any action hereunder, the court may award court costs to the person seeking to enforce the provisions of K.S.A. 75-4318 or 75-4319, and amendments thereto, if the court finds that the provisions of those statutes were violated. The award shall be assessed against the public agency or body responsible for the violation.

(d) In any action hereunder in which the defendant is the prevailing party, the court may award to the defendant court costs if the court finds that the plaintiff maintained the action frivolously, not in good faith or without a reasonable basis in fact or law.

(e) Except as otherwise provided by law, proceedings arising under this section shall take precedence over all other cases and shall be assigned for hearing and trial at the earliest practicable date.

(f) As used in this section, "meeting" has the meaning provided by K.S.A. 75-4317a and amendments thereto.

