

Kansas Open Records Act

Section 1

- (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.

Section 2

- (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.

45-215.

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

- (d) "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.
- (e) (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) "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.
- (g) "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. 21-3914 or 45-221, 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 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.
- (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.
- (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 that 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;
 - (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.
- (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 production 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. 1999 Supp. 40-2c20, 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. 1999 Supp. 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) (a) 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.
(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.

45-222.

Civil remedies to enforce act.

- (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 may award attorney fees 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 may award to the defendant attorney fees 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.

45-223.

- (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.

Section 6.

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.

Section 8.

- (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) 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 reenact 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 June 1, 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 re-visor 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;
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 over-ride 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 govern- mental 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.