



Testimony to Senate Federal and State Affairs Committee

SB 86 – Kansas Open Records

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Chairman LaTurner and members of the Committee:

Thank you for your willingness to review the Kansas Open Records Act (KORA). I am testifying today in support of SB 86, but also as a strong supporter for making Kansas government more transparent and open. To start, I believe that any expectation of transparency should extend to all levels of government within the state. From the building in which we are standing and the surrounding state agencies, to county and municipal governments, to the small taxing subdivision in rural Cherokee County. All levels of government should operate under the same presumption of openness. If something is good enough for municipal governments then it is good enough for the Kansas Legislature, and vice versa.

We routinely file open records requests, pursuant to KORA, of governmental entities across the state and all levels of government. As a result, we have experienced a wide array of issues related to these requests including the fees associated with securing records.

By way of example, KPI requested spending data from a Kansas school district; they had previously complied with a request for the same information. The district intended to charge us overtime rates to compile the information and ultimately settled on a bill of \$950.31 to provide a spreadsheet of payroll listings. Presumably, payroll data had already been compiled and should not have taken the 32 hours' worth of work the district indicated, let alone an expectation of employee overtime. After negotiating with the district in question we paid \$637 for the requested records.

The idea of negotiating for lower costs is not limited to our experience at Kansas Policy Institute. *The Kansas City Star* reported that the American Civil Liberties Union was charged \$83 for records from the Kansas City Kansas police department, nothing by the City of Hutchinson, and \$11,000 by the City of Lenexa.ⁱ The article further explained that the ACLU was negotiating for lower fees. Granted, this story is now several years old but it emerged as a similar version of this bill was considered by the legislature and perfectly illustrates the point. It also begs the question, what about the people that do not have the wherewithal to negotiate for lower fees?

I would also point out that the "Following the Money 2014" report from the U.S. Public Interest Research Group ranks Kansas' state spending transparency ranking as a "D-."ⁱⁱ Again, this may not deal directly with the issues before you today but it certainly gets to the desire for taxpayers to have ready, affordable access to records of the affairs of government.

While Kansas does have an open records law, it can and should be strengthened. Aside from the issue of fees, governments should not be allowed to offer a perfunctory "Your request will require more time," to honor the current three day response requirement. If that is an appropriate initial response timeframe, then a secondary mandatory response with further clarification on fees, request/denial, etc. is even more appropriate.

Definitions and exemptions should be strengthened and clarified. For instance, current law discussed "highly offensive" information. Perhaps list that information as an exclusion, rather than in a category that has the potential to encompass additional information in the future. Administrative processes should be established for appealing a denial. Court proceedings should be the final step, not the primary source of appeal. For civil

penalties for violations I would note that Illinois has a fine of \$5,000 for “knowing violations” of their law. The “knowing violation” is operative as it would insulate public servants inadvertent action and a higher fine would likely have more teeth than the current fine for violations in Kansas.

SB 86 is a good step in keeping Kansas government accountable. This is not to say that government is not held to account, but more to suggest that it is the responsibility of all Kansans to demand openness and transparency from the governments they elect. Open records and open meetings laws are a vital tool of that responsibility and we should always seek to make that tool more effective and put more power in the hands of watchdog entities, journalists, and everyday Kansans.

ⁱ <http://joco913.com/news/johnson-county-district-attorney-says-public-business-is-too-often-private>

ⁱⁱ <http://www.uspirg.org/reports/usp/following-money-2014>