



# MEMORANDUM

## Legislative Post Audit

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To: House Judiciary Committee  
From: Chris Clarke, Deputy Legislative Post  
Date: Auditor January , 2021  
Subject: Testimony Supporting House Bill 2049

**I appreciate the opportunity to testify in support of House Bill 2049.** This bill was introduced by the Legislative Post Audit Committee at our request. It has also been introduced in Senate Transparency and Ethics Committee.

### Background

Kansas Open Records law (K.S.A 45-215) says information held or maintained by agencies is an open record. The statute also sets out the process for persons or entities outside the agency to access public data or get copies. The law sets out an administrative process including that the request be in writing. Further, the law allows agencies to charge for the data in certain circumstances.

At the direction of the Legislative Post Audit Committee, Post Audit staff evaluate government programs in other agencies. Occasionally, agencies question whether they can charge Legislative Post Audit for requested records, per the Open Records Act.

We contacted 19 audit offices in other states about this issue. They all responded that they do not pay for audit data. Several mentioned that audits are not open record requests, and that paying for data may compromise independence of the auditors.

Moreover, the Legislative Post Audit (K.S.A. 46-1106) gives us access to agency records while conducting an audit. This access includes confidential data and information that might not be subject to disclosure under an open records act request.

### Bill provisions

**House bill 2049 modifies the Kansas Open Records Act to specifically prohibit agencies from charging Legislative Post Audit fees for access to or copies of data needed for conducting an audit pursuant to KSA 46-1101 et seq.** It adds the following provision to the Open Records Act:

*No public agency shall charge a fee for access to or copies of records if the request for such access to or copies of such records is made by the post auditor or an employee of the legislative division of post audit for the purpose of conducting an audit pursuant to the legislative post audit act, K.S.A. 46-1101, et seq., and amendments thereto, or any other law.*

**We think this simple amendment is important for several reasons.**

- It helps ensure that fees can't be used as a barrier to our statutory access to agency records during an audit.
- It codifies our internal policy of not paying agencies for records requested as part of an audit.
- It is consistent with other legislative audit offices' approach to this issue.