

HOUSE BILL No. 3019

By Committee on Appropriations

3-12

AN ACT concerning public records; pertaining to certain records pertaining to the performance of a governmental function by certain persons or entities; amending K.S.A. 45-217 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Each contract in an amount of not less than \$2,500,000 between a public agency and a person for the performance of a governmental function shall provide that:

(1) The public agency is entitled to receive a copy of the person's records, files and any other information pertaining to the performance of the governmental function; and

(2) such person's records, files and any other information pertaining to the performance of the governmental function are subject to disclosure by the public agency pursuant to the provisions of K.S.A. 45-215 *et seq.*, and amendments thereto.

(b) Each request to inspect or copy such person's records, files and any other information pertaining to the performance of the governmental function shall be made to the public agency in accordance with the provisions of K.S.A. 45-215 *et seq.*, and amendments thereto. Any failure to provide access to such records for the purpose of inspection or to provide copies of such records shall be deemed to be a violation of the open records act and amendments thereto, and subject to the penalties and remedies provided therein.

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

New Sec. 2. Notwithstanding any other provision of law, an agreement between a state agency and a foundation shall not be construed as a contract for the performance of a governmental function within the meaning of section 4, and amendments thereto. For the purposes of this section the term state agency shall have the meaning ascribed to it in K.S.A. 75-3701, and amendments thereto.

New Sec. 3. In determining whether a person or entity is the functional equivalent of a public agency, a court or other tribunal may consider the following:

- 1 (a) Whether a governmental function is performed;
- 2 (b) the level of funding received from a governmental agency;
- 3 (c) the extent of governmental involvement or regulation; and
- 4 (d) whether the entity was created by the government.

5 All relevant factors shall be considered cumulatively with no single
6 factor being essential or conclusive.

7 Sec. 4. K.S.A. 45-217 is hereby amended to read as follows: 45-217.

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

9 (a) "Business day" means any day other than a Saturday, Sunday or
10 day designated as a holiday by the congress of the United States, by the
11 legislature or governor of this state or by the respective political subdi-
12 vision of this state.

13 (b) "Criminal investigation records" means records of an investiga-
14 tory agency or criminal justice agency as defined by K.S.A. 22-4701 and
15 amendments thereto, compiled in the process of preventing, detecting or
16 investigating violations of criminal law, but does not include police blotter
17 entries, court records, rosters of inmates of jails or other correctional or
18 detention facilities or records pertaining to violations of any traffic law
19 other than vehicular homicide as defined by K.S.A. 21-3405 and amend-
20 ments thereto.

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

23 (d) "*Foundation*" means an organization, fund or other legal entity
24 which is:

25 (1) *Exempt from taxation pursuant to section 501(c)(3) of the internal*
26 *revenue code of 1986, as amended; and*

27 (2) *established for the principal purpose of receiving or using private*
28 *funds for charitable, scientific, cultural, educational or related purposes*
29 *that support or improve a state agency. Such organization, fund or other*
30 *legal entity shall not be deemed to be a state agency as defined in K.S.A.*
31 *75-3701 and amendments thereto.*

32 (e) "*Governmental function*" means the administration or manage-
33 ment of a program of a public agency, which program has been authorized
34 by law to be administered or managed by a person, where:

35 (1) *The person receives funding from the public agency for adminis-*
36 *tering or managing the program;*

37 (2) *the public agency is involved in or regulates to a significant extent*
38 *such person's administration or management of such program, whether*
39 *or not such involvement or regulation is direct, pervasive, continuous or*
40 *day-to-day; and*

41 (3) *the person participates in the formulation of governmental policies*
42 *or decisions in connection with the administration or management of the*
43 *program and such policies or decisions bind the public agency. Govern-*

1 *mental function shall not include the mere provision of goods or services*
2 *to a public agency without the delegated responsibility to administer or*
3 *manage a program of a public agency.*

4 ~~(d)~~ (f) “Official custodian” means any officer or employee of a public
5 agency who is responsible for the maintenance of public records, regard-
6 less of whether such records are in the officer’s or employee’s actual
7 personal custody and control.

8 ~~(e)~~ (g) (1) “Public agency” means the state or any political or taxing
9 subdivision of the state or any office, officer, agency or instrumentality
10 thereof, or any other entity receiving or expending and supported in
11 whole or in part by the public funds appropriated by the state or by public
12 funds of any political or taxing subdivision of the state. *Public agency*
13 *includes any person or entity which is deemed to be the functional equiv-*
14 *alent of a governmental agency.*

15 (2) “Public agency” shall not include:

16 (A) Any entity solely by reason of payment from public funds for
17 property, goods or services of such entity; (B) any municipal judge, judge
18 of the district court, judge of the court of appeals or justice of the supreme
19 court; or (C) any officer or employee of the state or political or taxing
20 subdivision of the state if the state or political or taxing subdivision does
21 not provide the officer or employee with an office which is open to the
22 public at least 35 hours a week.

23 ~~(f)~~ (h) (1) “Public record” means any recorded information, regard-
24 less of form or characteristics, which is made, maintained or kept by or
25 is in the possession of any public agency *or to which a public agency is*
26 *entitled to receive a copy by law or contract under section 2, and amend-*
27 *ments thereto*, including, but not limited to, an agreement in settlement
28 of litigation involving the Kansas public employees retirement system and
29 the investment of moneys of the fund.

30 (2) “Public record” shall not include records which are owned by a
31 private person or entity and are not related to functions, activities, pro-
32 grams or operations funded by public funds or records which are made,
33 maintained or kept by an individual who is a member of the legislature
34 or of the governing body of any political or taxing subdivision of the state.

35 (3) “Public record” shall not include records of employers related to
36 the employer’s individually identifiable contributions made on behalf of
37 employees for workers compensation, social security, unemployment in-
38 surance or retirement. The provisions of this subsection shall not apply
39 to records of employers of lump-sum payments for contributions as de-
40 scribed in this subsection paid for any group, division or section of an
41 agency.

42 ~~(g)~~ (i) “Undercover agent” means an employee of a public agency
43 responsible for criminal law enforcement who is engaged in the detection

1 or investigation of violations of criminal law in a capacity where such
2 employee's identity or employment by the public agency is secret.

3 Sec. 5. K.S.A. 45-217 is hereby repealed.

4 Sec. 6. This act shall take effect and be in force from and after its
5 publication in the statute book.

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