

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2004

HOUSE BILL No. 2490

By Special Committee on Kansas Security

1-9

12 AN ACT amending the open records act; relating to certain closed re-
13 cords; amending K.S.A. 2003 Supp. 45-221 and repealing the existing
14 section.

15

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

17 Section 1. K.S.A. 2003 Supp. 45-221 is hereby amended to read as
18 follows: 45-221. (a) Except to the extent disclosure is otherwise required
19 by law, a public agency shall not be required to disclose:

20 (1) Records the disclosure of which is specifically prohibited or re-
21 stricted by federal law, state statute or rule of the Kansas supreme court
22 or the disclosure of which is prohibited or restricted pursuant to specific
23 authorization of federal law, state statute or rule of the Kansas supreme
24 court to restrict or prohibit disclosure.

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

27 (3) Medical, psychiatric, psychological or alcoholism or drug depend-
28 ency treatment records which pertain to identifiable patients.

29 (4) Personnel records, performance ratings or individually identifia-
30 ble records pertaining to employees or applicants for employment, except
31 that this exemption shall not apply to the names, positions, salaries and
32 lengths of service of officers and employees of public agencies once they
33 are employed as such.

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

36 (6) Letters of reference or recommendation pertaining to the char-
37 acter or qualifications of an identifiable individual.

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

41 (8) Information which would reveal the identity of an individual who
42 lawfully makes a donation to a public agency, if anonymity of the donor
43 is a condition of the donation.

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

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

9 (A) Is in the public interest;

10 (B) would not interfere with any prospective law enforcement action;

11 (C) would not reveal the identity of any confidential source or un-
12 dercover agent;

13 (D) would not reveal confidential investigative techniques or proce-
14 dures not known to the general public;

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

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

20 (11) Records of agencies involved in administrative adjudication or
21 civil litigation, compiled in the process of detecting or investigating vio-
22 lations of civil law or administrative rules and regulations, if disclosure
23 would interfere with a prospective administrative adjudication or civil
24 litigation or reveal the identity of a confidential source or undercover
25 agent.

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

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

36 (14) Correspondence between a public agency and a private individ-
37 ual, other than correspondence which is intended to give notice of an
38 action, policy or determination relating to any regulatory, supervisory or
39 enforcement responsibility of the public agency or which is widely dis-
40 tributed to the public by a public agency and is not specifically in response
41 to communications from such a private individual.

42 (15) Records pertaining to employer-employee negotiations, if dis-
43 closure would reveal information discussed in a lawful executive session

- 1 under K.S.A. 75-4319, and amendments thereto.
- 2 (16) Software programs for electronic data processing and documen-
3 tation thereof, but each public agency shall maintain a register, open to
4 the public, that describes:
- 5 (A) The information which the agency maintains on computer facil-
6 ities; and
- 7 (B) the form in which the information can be made available using
8 existing computer programs.
- 9 (17) Applications, financial statements and other information sub-
10 mitted in connection with applications for student financial assistance
11 where financial need is a consideration for the award.
- 12 (18) Plans, designs, drawings or specifications which are prepared by
13 a person other than an employee of a public agency or records which are
14 the property of a private person.
- 15 (19) Well samples, logs or surveys which the state corporation com-
16 mission requires to be filed by persons who have drilled or caused to be
17 drilled, or are drilling or causing to be drilled, holes for the purpose of
18 discovery or production of oil or gas, to the extent that disclosure is limited
19 by rules and regulations of the state corporation commission.
- 20 (20) Notes, preliminary drafts, research data in the process of anal-
21 ysis, unfunded grant proposals, memoranda, recommendations or other
22 records in which opinions are expressed or policies or actions are pro-
23 posed, except that this exemption shall not apply when such records are
24 publicly cited or identified in an open meeting or in an agenda of an open
25 meeting.
- 26 (21) Records of a public agency having legislative powers, which re-
27 cords pertain to proposed legislation or amendments to proposed legis-
28 lation, except that this exemption shall not apply when such records are:
- 29 (A) Publicly cited or identified in an open meeting or in an agenda
30 of an open meeting; or
- 31 (B) distributed to a majority of a quorum of any body which has au-
32 thority to take action or make recommendations to the public agency with
33 regard to the matters to which such records pertain.
- 34 (22) Records of a public agency having legislative powers, which re-
35 cords pertain to research prepared for one or more members of such
36 agency, except that this exemption shall not apply when such records are:
- 37 (A) Publicly cited or identified in an open meeting or in an agenda
38 of an open meeting; or
- 39 (B) distributed to a majority of a quorum of any body which has au-
40 thority to take action or make recommendations to the public agency with
41 regard to the matters to which such records pertain.
- 42 (23) Library patron and circulation records which pertain to identi-
43 fiable individuals.

- 1 (24) Records which are compiled for census or research purposes and
2 which pertain to identifiable individuals.
- 3 (25) Records which represent and constitute the work product of an
4 attorney.
- 5 (26) Records of a utility or other public service pertaining to individ-
6 ually identifiable residential customers of the utility or service, except that
7 information concerning billings for specific individual customers named
8 by the requester shall be subject to disclosure as provided by this act.
- 9 (27) Specifications for competitive bidding, until the specifications
10 are officially approved by the public agency.
- 11 (28) Sealed bids and related documents, until a bid is accepted or all
12 bids rejected.
- 13 (29) Correctional records pertaining to an identifiable inmate or re-
14 lease, except that:
- 15 (A) The name; photograph and other identifying information; sen-
16 tence data; parole eligibility date; custody or supervision level; disciplinary
17 record; supervision violations; conditions of supervision, excluding
18 requirements pertaining to mental health or substance abuse counseling;
19 location of facility where incarcerated or location of parole office main-
20 taining supervision and address of a releasee whose crime was committed
21 after the effective date of this act shall be subject to disclosure to any
22 person other than another inmate or releasee, except that the disclosure
23 of the location of an inmate transferred to another state pursuant to the
24 interstate corrections compact shall be at the discretion of the secretary
25 of corrections;
- 26 (B) the ombudsman of corrections, the attorney general, law enforce-
27 ment agencies, counsel for the inmate to whom the record pertains and
28 any county or district attorney shall have access to correctional records to
29 the extent otherwise permitted by law;
- 30 (C) the information provided to the law enforcement agency pursu-
31 ant to the sex offender registration act, K.S.A. 22-4901, *et seq.*, and
32 amendments thereto, shall be subject to disclosure to any person, except
33 that the name, address, telephone number or any other information which
34 specifically and individually identifies the victim of any offender required
35 to register as provided by the Kansas offender registration act, K.S.A. 22-
36 4901 *et seq.* and amendments thereto, shall not be disclosed; and
- 37 (D) records of the department of corrections regarding the financial
38 assets of an offender in the custody of the secretary of corrections shall
39 be subject to disclosure to the victim, or such victim's family, of the crime
40 for which the inmate is in custody as set forth in an order of restitution
41 by the sentencing court.
- 42 (30) Public records containing information of a personal nature
43 where the public disclosure thereof would constitute a clearly unwar-

1 ranted invasion of personal privacy.

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

9 (32) Engineering and architectural estimates made by or for any pub-
10 lic agency relative to public improvements.

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

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

18 (35) Any report or record which is made pursuant to K.S.A. 65-4922,
19 65-4923 or 65-4924, and amendments thereto, and which is privileged
20 pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

21 (36) Information which would reveal the precise location of an ar-
22 cheological site.

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

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

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

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

35 (41) All financial analysis ratios and examination synopses concerning
36 insurance companies that are submitted to the commissioner by the na-
37 tional association of insurance commissioners' insurance regulatory infor-
38 mation system.

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

41 (43) Market research, market plans, business plans and the terms and
42 conditions of managed care or other third party contracts, developed or
43 entered into by the university of Kansas medical center in the operation

1 and management of the university hospital which the chancellor of the
2 university of Kansas or the chancellor's designee determines would give
3 an unfair advantage to competitors of the university of Kansas medical
4 center.

5 (44) The amount of franchise tax paid to the secretary of state by
6 domestic corporations, foreign corporations, domestic limited liability
7 companies, foreign limited liability companies, domestic limited partner-
8 ship, foreign limited partnership, domestic limited liability partnerships
9 and foreign limited liability partnerships.

10 (45) Records, **other than criminal investigation records**, the dis-
11 closure of which would pose a substantial likelihood of revealing security
12 measures that protect: (A) Systems, facilities or equipment used in the
13 production, transmission or distribution of energy, water or communi-
14 cations services; ~~or~~ (B) **transportation and** sewer or wastewater treat-
15 ment systems, facilities or equipment; ~~or~~ (C) **private property or per-**
16 **sons, if the records are submitted to the agency for purposes of**
17 **this paragraph**. For purposes of this paragraph, security means meas-
18 ures that protect against criminal acts intended to intimidate or coerce
19 the civilian population, influence government policy by intimidation or
20 coercion or to affect the operation of government by disruption of public
21 services, mass destruction, assassination or kidnapping. **Security meas-**
22 **ures include, but are not limited to, intelligence information, tacti-**
23 **cal plans, resource deployment, responses to actual events and**
24 **vulnerability assessments.**

25 (46) Any information or material received by the secretary of state
26 pursuant to subsection (b) of K.S.A. 2003 Supp. 44-1518, and amend-
27 ments thereto, except when such information is required to be submitted
28 in an application pursuant to K.S.A. 2003 Supp. 44-1520, and amend-
29 ments thereto.

30 ~~(47) Records of a public agency related to security measures, if dis-~~
31 ~~closure would jeopardize the safety and security of the lives, physical~~
32 ~~safety or property of the citizens of the state. For the purpose of this~~
33 ~~paragraph, security measures means the preparing for, preventing or re-~~
34 ~~sponding to criminal acts intended to intimidate or coerce the civilian~~
35 ~~population, influence government policy by intimidation or coercion or~~
36 ~~to affect the operation of government by disruption of public services,~~
37 ~~mass destruction, assassination or kidnapping. Security measures may~~
38 ~~include, but are not limited to, intelligence information, tactical plans,~~
39 ~~resource deployment, responses to actual events or vulnerability assess-~~
40 ~~ments. The provision of this exception shall expire on July 1, 2009. The~~
41 ~~legislature shall review this exception prior to such expiration date.~~

42 (b) Except to the extent disclosure is otherwise required by law or as
43 appropriate during the course of an administrative proceeding or on ap-

1 peal from agency action, a public agency or officer shall not disclose fi-
2 nancial information of a taxpayer which may be required or requested by
3 a county appraiser or the director of property valuation to assist in the
4 determination of the value of the taxpayer's property for ad valorem tax-
5 ation purposes; or any financial information of a personal nature required
6 or requested by a public agency or officer, including a name, job descrip-
7 tion or title revealing the salary or other compensation of officers, em-
8 ployees or applicants for employment with a firm, corporation or agency,
9 except a public agency. Nothing contained herein shall be construed to
10 prohibit the publication of statistics, so classified as to prevent identifi-
11 cation of particular reports or returns and the items thereof.

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

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

27 (e) The provisions of this section shall not be construed to exempt
28 from public disclosure statistical information not descriptive of any iden-
29 tifiable person.

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

36 Sec. 2. K.S.A. 2003 Supp. 45-221 is hereby repealed.

37 Sec. 3. This act shall take effect and be in force from and after its
38 publication in the statute book.