

As Amended by Senate Committee

As Amended by House Committee

Session of 2004

HOUSE BILL No. 2889

By Committee on Federal and State Affairs

2-17

12 AN ACT concerning the Kansas open records act; relating to records not
13 required to be open; amending K.S.A. 2003 Supp. 45-221 and repeal-
14 ing the existing 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 or
32 *actual compensation, employment contracts or agreements of employees*
33 ***which provide for compensation funded in whole or in part by pub-***
34 ***lic funds appropriated by the state or public funds of any political***
35 ***or taxing subdivision of the state, and lengths of service of officers and***
36 ***employees of public agencies once they are employed as such.***

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

39 (6) *Letters of reference or recommendation pertaining to the char-*
40 *acter or qualifications of an identifiable individual, except documents re-*
41 *lating to the appointment of persons to fill a vacancy in an elected office.*

42 (7) Library, archive and museum materials contributed by private
43 persons, to the extent of any limitations imposed as conditions of the

1 contribution.

2 (8) Information which would reveal the identity of an individual who
3 lawfully makes a donation to a public agency, if anonymity of the donor
4 is a condition of the donation, *except if the donation is intended for or*
5 *restricted to providing remuneration or personal tangible benefit to a*
6 *named public officer or employee.*

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

11 (10) Criminal investigation records, ~~except that~~ *as provided herein.*
12 The district court, in an action brought pursuant to K.S.A. 45-222, and
13 amendments thereto, may order disclosure of such records, subject to
14 such conditions as the court may impose, if the court finds that disclosure:

15 (A) Is in the public interest;

16 (B) would not interfere with any prospective law enforcement action,
17 *criminal investigation or prosecution;*

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

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

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

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

27 *If a public record is discretionarily closed by a public agency pursuant*
28 *to this subsection, the record custodian, upon request, shall provide a*
29 *written citation to the specific provisions of paragraphs (A) through (F)*
30 *that necessitate closure of that public record.*

31 (11) Records of agencies involved in administrative adjudication or
32 civil litigation, compiled in the process of detecting or investigating vio-
33 lations of civil law or administrative rules and regulations, if disclosure
34 would interfere with a prospective administrative adjudication or civil
35 litigation or reveal the identity of a confidential source or undercover
36 agent.

37 (12) Records of emergency or security information or procedures of
38 a public agency, or plans, drawings, specifications or related information
39 for any building or facility which is used for purposes requiring security
40 measures in or around the building or facility or which is used for the
41 generation or transmission of power, water, fuels or communications, if
42 disclosure would jeopardize security of the public agency, building or
43 facility.

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

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

10 (15) Records pertaining to employer-employee negotiations, if dis-
11 closure would reveal information discussed in a lawful executive session
12 under K.S.A. 75-4319, and amendments thereto.

13 (16) Software programs for electronic data processing and documen-
14 tation thereof, but each public agency shall maintain a register, open to
15 the public, that describes:

16 (A) The information which the agency maintains on computer facil-
17 ities; and

18 (B) the form in which the information can be made available using
19 existing computer programs.

20 (17) Applications, financial statements and other information sub-
21 mitted in connection with applications for student financial assistance
22 where financial need is a consideration for the award.

23 (18) Plans, designs, drawings or specifications which are prepared by
24 a person other than an employee of a public agency or records which are
25 the property of a private person.

26 (19) Well samples, logs or surveys which the state corporation com-
27 mission requires to be filed by persons who have drilled or caused to be
28 drilled, or are drilling or causing to be drilled, holes for the purpose of
29 discovery or production of oil or gas, to the extent that disclosure is limited
30 by rules and regulations of the state corporation commission.

31 (20) Notes, preliminary drafts, research data in the process of anal-
32 ysis, unfunded grant proposals, memoranda, recommendations or other
33 records in which opinions are expressed or policies or actions are pro-
34 posed, except that this exemption shall not apply when such records are
35 publicly cited or identified in an open meeting or in an agenda of an open
36 meeting.

37 (21) Records of a public agency having legislative powers, which re-
38 cords pertain to proposed legislation or amendments to proposed legis-
39 lation, except that this exemption shall not apply when such records are:

40 (A) Publicly cited or identified in an open meeting or in an agenda
41 of an open meeting; or

42 (B) distributed to a majority of a quorum of any body which has au-
43 thority to take action or make recommendations to the public agency with

- 1 regard to the matters to which such records pertain.
- 2 (22) Records of a public agency having legislative powers, which re-
3 cords pertain to research prepared for one or more members of such
4 agency, except that this exemption shall not apply when such records are:
5 (A) Publicly cited or identified in an open meeting or in an agenda
6 of an open meeting; or
7 (B) distributed to a majority of a quorum of any body which has au-
8 thority to take action or make recommendations to the public agency with
9 regard to the matters to which such records pertain.
- 10 (23) Library patron and circulation records which pertain to identi-
11 fiable individuals.
- 12 (24) Records which are compiled for census or research purposes and
13 which pertain to identifiable individuals.
- 14 (25) Records which represent and constitute the work product of an
15 attorney.
- 16 (26) Records of a utility or other public service pertaining to individ-
17 ually identifiable residential customers of the utility or service, except that
18 information concerning billings for specific individual customers named
19 by the requester shall be subject to disclosure as provided by this act.
- 20 (27) Specifications for competitive bidding, until the specifications
21 are officially approved by the public agency.
- 22 (28) Sealed bids and related documents, until a bid is accepted or all
23 bids rejected.
- 24 (29) Correctional records pertaining to an identifiable inmate or re-
25 lease, except that:
- 26 (A) The name; photograph and other identifying information; sen-
27 tence data; parole eligibility date; custody or supervision level; disciplinary
28 record; supervision violations; conditions of supervision, excluding
29 requirements pertaining to mental health or substance abuse counseling;
30 location of facility where incarcerated or location of parole office main-
31 taining supervision and address of a releasee whose crime was committed
32 after the effective date of this act shall be subject to disclosure to any
33 person other than another inmate or releasee, except that the disclosure
34 of the location of an inmate transferred to another state pursuant to the
35 interstate corrections compact shall be at the discretion of the secretary
36 of corrections;
- 37 (B) the ombudsman of corrections, the attorney general, law enforce-
38 ment agencies, counsel for the inmate to whom the record pertains and
39 any county or district attorney shall have access to correctional records to
40 the extent otherwise permitted by law;
- 41 (C) the information provided to the law enforcement agency pursu-
42 ant to the sex offender registration act, K.S.A. 22-4901, *et seq.*, and
43 amendments thereto, shall be subject to disclosure to any person, except

1 that the name, address, telephone number or any other information which
2 specifically and individually identifies the victim of any offender required
3 to register as provided by the Kansas offender registration act, K.S.A. 22-
4 4901 *et seq.* and amendments thereto, shall not be disclosed; and

5 (D) records of the department of corrections regarding the financial
6 assets of an offender in the custody of the secretary of corrections shall
7 be subject to disclosure to the victim, or such victim's family, of the crime
8 for which the inmate is in custody as set forth in an order of restitution
9 by the sentencing court.

10 (30) Public records containing information of a personal nature
11 where the public disclosure thereof would constitute a clearly unwar-
12 ranted invasion of personal privacy.

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

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

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

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

29 ~~(35) Any report or record which is made pursuant to K.S.A. 65-4922,~~
30 ~~65-4923 or 65-4924, and amendments thereto, and which is privileged~~
31 ~~pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.~~

32 **(35) Any report or record which is made pursuant to K.S.A. 65-**
33 **4922, 65-4923 or 65-4924, and amendments thereto, and which is**
34 **privileged pursuant to K.S.A. 65-4915 or 65-4925, and amend-**
35 **ments thereto.**

36 ~~(36)~~ (36) Information which would reveal the precise location of an
37 archeological site.

38 ~~(37)~~ ~~(36)~~ (37) Any financial data or traffic information from a railroad
39 company, to a public agency, concerning the sale, lease or rehabilitation
40 of the railroad's property in Kansas.

41 ~~(38) Risk-based capital reports, risk-based capital plans and corrective~~
42 ~~orders including the working papers and the results of any analysis filed~~
43 ~~with the commissioner of insurance in accordance with K.S.A. 40-2c20~~

1 and ~~40-2d20~~ and amendments thereto.
2 — ~~(39)~~ Memoranda and related materials required to be used to support
3 the annual actuarial opinions submitted pursuant to subsection (b) of
4 K.S.A. ~~40-409~~, and amendments thereto.
5 — ~~(40)~~ Disclosure reports filed with the commissioner of insurance un-
6 der subsection (a) of K.S.A. ~~40-2,156~~, and amendments thereto.
7 — ~~(41)~~ ~~(37)~~ **(38)** All financial analysis ratios and examination synopses
8 concerning insurance companies that are submitted to the commissioner
9 by the national association of insurance commissioners' insurance regu-
10 latory information system.
11 ~~(42)~~ ~~(39)~~ **(39)** Any records the disclosure of which is restricted or
12 prohibited by a tribal-state gaming compact.
13 ~~(43)~~ ~~(39)~~ **(40)** Market research, market plans, business plans and the
14 terms and conditions of managed care or other third party contracts,
15 developed or entered into by the university of Kansas medical center in
16 the operation and management of the university hospital which the chan-
17 cellor of the university of Kansas or the chancellor's designee determines
18 would give an unfair advantage to competitors of the university of Kansas
19 medical center.
20 ~~(44)~~ ~~(40)~~ **(41)** The amount of franchise tax paid to the secretary of
21 state by domestic corporations, foreign corporations, domestic limited
22 liability companies, foreign limited liability companies, domestic limited
23 partnership, foreign limited partnership, domestic limited liability part-
24 nerships and foreign limited liability partnerships.
25 ~~(45)~~ ~~(41)~~ **(42)** Records the disclosure of which would pose a substan-
26 tial likelihood of revealing security measures that protect: (A) Systems,
27 facilities or equipment used in the production, transmission or distribu-
28 tion of energy, water or communications services; or (B) sewer or waste-
29 water treatment systems, facilities or equipment. For purposes of this
30 paragraph, security means measures that protect against criminal acts
31 intended to intimidate or coerce the civilian population, influence gov-
32 ernment policy by intimidation or coercion or to affect the operation of
33 government by disruption of public services, mass destruction, assassi-
34 nation or kidnapping.
35 ~~(46)~~ Any information or material received by the secretary of state
36 pursuant to subsection (b) of K.S.A. ~~2003 Supp. 44-1518~~, and amend-
37 ments thereto, except when such information is required to be submitted
38 in an application pursuant to K.S.A. ~~2003 Supp. 44-1520~~, and amend-
39 ments thereto.
40 (b) Except to the extent disclosure is otherwise required by law or as
41 appropriate during the course of an administrative proceeding or on ap-
42 peal from agency action, a public agency or officer shall not disclose fi-
43 nancial information of a taxpayer which may be required or requested by

1 a county appraiser or the director of property valuation to assist in the
2 determination of the value of the taxpayer's property for ad valorem tax-
3 ation purposes; or any financial information of a personal nature required
4 or requested by a public agency or officer, including a name, job descrip-
5 tion or title revealing the salary or other compensation of officers, em-
6 ployees or applicants for employment with a firm, corporation or agency,
7 except a public agency. Nothing contained herein shall be construed to
8 prohibit the publication of statistics, so classified as to prevent identifi-
9 cation of particular reports or returns and the items thereof.

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

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

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

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

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

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