

HOUSE BILL No. 2922

By Committee on Federal and State Affairs

3-9

9 AN ACT concerning the Kansas open records act; relating to records not
10 required to be open; amending K.S.A. 2003 Supp. 45-221 and repeal-
11 ing the existing section.

12

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

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

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

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

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

26 (4) Personnel records, performance ratings or individually identifica-
27 ble records pertaining to employees or applicants for employment, except
28 that this exemption shall not apply to the names, positions, salaries or
29 *actual compensation, employment contracts or agreements* and lengths of
30 service of officers and employees of public agencies once they are em-
31 ployed as such. *In an action brought pursuant to K.S.A. 45-222, and*
32 *amendments thereto, the district court may impose. If the court finds that*
33 *disclosure is in the public interest and that the records pertain to a public*
34 *officer or employee who, in such officer's or employee's official capacity,*
35 *handles public money, works with children or sets public policy, when*
36 *such officer or employee has resigned, been terminated or otherwise has*
37 *been disciplined for reasons involving such matters of public trust.*

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

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

43 (7) Library, archive and museum materials contributed by private

1 persons, to the extent of any limitations imposed as conditions of the
2 contribution.

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

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

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

16 (A) Is in the public interest;

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

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

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

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

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

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

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

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

1 facility.

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

5 (14) Correspondence between a public agency and a private individ-
6 ual, other than *official* correspondence which is *initiated by the agency,*
7 *public official or public employee and involves a tangible gift, compen-*
8 *sation, favor, benefit or gratuity being sought by the agency, official or*
9 *employee, or which is intended to give notice of an action, policy or de-*
10 *termination relating to any regulatory, supervisory or enforcement re-*
11 *sponsibility of the public agency or which is widely distributed to the*
12 *public by a public agency and is not specifically in response to commu-*
13 *nications from such a private individual.*

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

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

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

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

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

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

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

35 (20) Notes, preliminary drafts, research data in the process of anal-
36 ysis, unfunded grant proposals, memoranda, recommendations or other
37 records in which opinions are expressed or policies or actions are pro-
38 posed, *or records or research pertaining to proposed legislation,* except
39 that this exemption shall not apply when such records are publicly cited
40 or identified in an open meeting or in an agenda of an open meeting *or*
41 *distributed to a majority of a quorum of any body which has authority*
42 *to take action or make recommendations to the public agency with regard*
43 *to the matters to which such records pertain.*

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

1 (B) the ombudsman of corrections, the attorney general, law enforce-
2 ment agencies, counsel for the inmate to whom the record pertains and
3 any county or district attorney shall have access to correctional records to
4 the extent otherwise permitted by law;

5 (C) the information provided to the law enforcement agency pursu-
6 ant to the sex offender registration act, K.S.A. 22-4901, *et seq.*, and
7 amendments thereto, shall be subject to disclosure to any person, except
8 that the name, address, telephone number or any other information which
9 specifically and individually identifies the victim of any offender required
10 to register as provided by the Kansas offender registration act, K.S.A. 22-
11 4901 *et seq.* and amendments thereto, shall not be disclosed; and

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

17 ~~(30)~~ (27) Public records containing information of a personal nature
18 where the public disclosure thereof would constitute a clearly unwar-
19 ranted invasion of personal privacy, *as determined by rules adopted by*
20 *the attorney general.*

21 ~~(31)~~ (28) Public records pertaining to prospective location of a busi-
22 ness or industry where no previous public disclosure has been made of
23 the business' or industry's interest in locating in, relocating within or
24 expanding within the state. This exception shall not include those records
25 pertaining to application of agencies for permits or licenses necessary to
26 do business or to expand business operations within this state, except as
27 otherwise provided by law.

28 ~~(32)~~ (29) Engineering and architectural estimates made by or for any
29 public agency relative to public improvements.

30 ~~(33)~~ (30) Financial information submitted by contractors in qualifi-
31 cation statements to any public agency.

32 ~~(34)~~ (31) Records involved in the obtaining and processing of intel-
33 lectual property rights that are expected to be, wholly or partially vested
34 in or owned by a state educational institution, as defined in K.S.A. 76-
35 711, and amendments thereto, or an assignee of the institution organized
36 and existing for the benefit of the institution.

37 ~~(35)~~ (32) Any report or record which is made pursuant to K.S.A. 65-
38 4922, 65-4923 or 65-4924, and amendments thereto, and which is privi-
39 leged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

40 ~~(36)~~ (33) Information which would reveal the precise location of an
41 archeological site.

42 ~~(37)~~ (34) Any financial data or traffic information from a railroad com-
43 pany, to a public agency, concerning the sale, lease or rehabilitation of

1 the railroad's property in Kansas.

2 ~~(38) Risk-based capital reports, risk-based capital plans and corrective~~
3 ~~orders including the working papers and the results of any analysis filed~~
4 ~~with the commissioner of insurance in accordance with K.S.A. 40-2e20~~
5 ~~and 40-2d20 and amendments thereto.~~

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

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

11 ~~(41) (35) All financial analysis ratios and examination synopses con-~~
12 ~~cerning insurance companies that are submitted to the commissioner by~~
13 ~~the national association of insurance commissioners' insurance regulatory~~
14 ~~information system.~~

15 ~~(42) (36) Any records the disclosure of which is restricted or prohib-~~
16 ~~ited by a tribal-state gaming compact.~~

17 ~~(43) (37) Market research, market plans, business plans and the terms~~
18 ~~and conditions of managed care or other third party contracts, developed~~
19 ~~or entered into by the university of Kansas medical center in the operation~~
20 ~~and management of the university hospital which the chancellor of the~~
21 ~~university of Kansas or the chancellor's designee determines would give~~
22 ~~an unfair advantage to competitors of the university of Kansas medical~~
23 ~~center.~~

24 ~~(44) (38) The amount of franchise tax paid to the secretary of state~~
25 ~~by domestic corporations, foreign corporations, domestic limited liability~~
26 ~~companies, foreign limited liability companies, domestic limited partner-~~
27 ~~ship, foreign limited partnership, domestic limited liability partnerships~~
28 ~~and foreign limited liability partnerships.~~

29 ~~(45) (39) Records the disclosure of which would pose a substantial~~
30 ~~likelihood of revealing security measures that protect: (A) Systems, facil-~~
31 ~~ities or equipment used in the production, transmission or distribution of~~
32 ~~energy, water or communications services; or (B) sewer or wastewater~~
33 ~~treatment systems, facilities or equipment. For purposes of this para-~~
34 ~~graph, security means measures that protect against criminal acts in-~~
35 ~~tended to intimidate or coerce the civilian population, influence govern-~~
36 ~~ment policy by intimidation or coercion or to affect the operation of~~
37 ~~government by disruption of public services, mass destruction, assassi-~~
38 ~~nation or kidnapping.~~

39 ~~(46) Any information or material received by the secretary of state~~
40 ~~pursuant to subsection (b) of K.S.A. 2003 Supp. 44-1518, and amend-~~
41 ~~ments thereto, except when such information is required to be submitted~~
42 ~~in an application pursuant to K.S.A. 2003 Supp. 44-1520, and amend-~~
43 ~~ments thereto.~~

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

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

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

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

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

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

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