AN ACT concerning open records; creating exemptions in the open records act for cybersecurity assessments, cybersecurity plans and cybersecurity vulnerabilities; amending K.S.A. 2020 Supp. 45-217 and 45-221 and repealing the existing sections.

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

Section 1. K.S.A. 2020 Supp. 45-217 is hereby amended to read as follows: 45-217. As used in the open records act, unless the context otherwise requires:

(a) "Business day" means any day other than a Saturday, Sunday or day designated as a holiday by the congress of the United States, by the legislature or governor of this state or by the respective political subdivision of this state.

(b) "Clearly unwarranted invasion of personal privacy" means revealing information that would be highly offensive to a reasonable person, including information that may pose a risk to a person or property and is not of legitimate concern to the public.

(c) "Criminal investigation records" means: (1) Every audio or video recording made and retained by law enforcement using a body camera or vehicle camera as defined by K.S.A. 2020 Supp. 45-254, and amendments thereto; and (2) records of an investigatory agency or criminal justice agency as defined by K.S.A. 22-4701, and amendments thereto, compiled in the process of preventing, detecting or investigating violations of criminal law, but does not include police blotter entries, court records, rosters of inmates of jails or other correctional or detention facilities or records pertaining to violations of any traffic law other than vehicular homicide as defined by K.S.A. 21-3405, prior to its repeal, or K.S.A. 2020 Supp. 21-5406, and amendments thereto.

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

(e) "Cybersecurity assessment" means an investigation undertaken by a person, governmental body or other entity to identify vulnerabilities in cybersecurity plans.

(f) "Cybersecurity plan" means information about a person's information systems, network security, encryption, network mapping, access control, passwords, authentication practices, computer hardware
or software or response to cybersecurity incidents.

(g) "Cybersecurity vulnerability" means a deficiency within computer hardware or software, or within a computer network or information system, that could be exploited by unauthorized parties for use against an individual computer user or a computer network or information system.

(h) "Official custodian" means any officer or employee of a public agency who is responsible for the maintenance of public records, regardless of whether such records are in the officer's or employee's actual personal custody and control.

(f)(i) (1) "Public agency" means the state or any political or taxing subdivision of the state or any office, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by the public funds appropriated by the state or by public funds of any political or taxing subdivision of the state.

(2) "Public agency" shall does not include:

(A) Any entity solely by reason of payment from public funds for property, goods or services of such entity; or (B) any municipal judge, judge of the district court, judge of the court of appeals or justice of the supreme court.

(j)(j) (1) "Public record" means any recorded information, regardless of form, characteristics or location, which is made, maintained or kept by or is in the possession of:

(A) Any public agency; or
(B) any officer or employee of a public agency pursuant to the officer's or employee's official duties and which is related to the functions, activities, programs or operations of any public agency.

(2) "Public record" shall include, but not be limited to, an agreement in settlement of litigation involving the Kansas public employees retirement system and the investment of moneys of the fund.

(3) Notwithstanding the provisions of subsection (g) (j)(1), "public record" shall does not include:

(A) Records which that are owned by a private person or entity and are not related to functions, activities, programs or operations funded by public funds. As used in this subparagraph, "private person" shall does not include an officer or employee of a public agency who is acting pursuant to the officer's or employee's official duties;
(B) records which that are made, maintained or kept by an individual who is a member of the legislature or of the governing body of any political or taxing subdivision of the state; or
(C) records of employers related to the employer's individually identifiable contributions made on behalf of employees for workers compensation, social security, unemployment insurance or retirement. The provisions of this subparagraph shall not apply to records of employers of

or software or response to cybersecurity incidents.
lump-sum payments for contributions as described in this subparagraph
paid for any group, division or section of an agency.

(h)(k) "Undercover agent" means an employee of a public agency
responsible for criminal law enforcement who is engaged in the detection
or investigation of violations of criminal law in a capacity where such
employee's identity or employment by the public agency is secret.

Sec. 2. K.S.A. 2020 Supp. 45-221 is hereby amended to read as
follows: 45-221. (a) Except to the extent disclosure is otherwise required
by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or
restricted by federal law, state statute or rule of the Kansas supreme court
or rule of the senate committee on confirmation oversight relating to
information submitted to the committee pursuant to K.S.A. 75-4315d, and
amendments thereto, or the disclosure of which is prohibited or restricted
pursuant to specific authorization of federal law, state statute or rule of the
Kansas supreme court or rule of the senate committee on confirmation
oversight relating to information submitted to the committee pursuant to
K.S.A. 75-4315d, and amendments thereto, to restrict or prohibit
disclosure.

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

(3) Medical, psychiatric, psychological or alcoholism or drug
dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable
records pertaining to employees or applicants for employment, except that
this exemption shall not apply to the names, positions, salaries or actual
compensation employment contracts or employment-related contracts or
agreements and lengths of service of officers and employees of public
agencies once they are employed as such.

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

(6) Letters of reference or recommendation pertaining to the character
or qualifications of an identifiable individual, except documents relating to
the appointment of persons to fill a vacancy in an elected office.

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

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

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

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

(A) Is in the public interest;
(B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution;
(C) would not reveal the identity of any confidential source or undercover agent;
(D) would not reveal confidential investigative techniques or procedures not known to the general public;
(E) would not endanger the life or physical safety of any person; and
(F) would not reveal the name, address, phone number or any other information that specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

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

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, if disclosure would jeopardize public safety, including records of cybersecurity plans, cybersecurity assessments and cybersecurity vulnerabilities or procedures related to cybersecurity plans, cybersecurity assessments and cybersecurity vulnerabilities, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.
(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

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

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information that the agency maintains on computer facilities; and

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

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

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

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

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

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

(B) distributed to a majority of a quorum of any body that has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which
records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:
(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or
(B) distributed to a majority of a quorum of any body which that has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.
(23) Library patron and circulation records which that pertain to identifiable individuals.
(24) Records which that are compiled for census or research purposes and which pertain to identifiable individuals.
(25) Records which that represent and constitute the work product of an attorney.
(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service.
(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.
(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.
(29) Correctional records pertaining to an identifiable inmate or release, except that:
(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;
(B) the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;
(C) the information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall not be disclosed; and
(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

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

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

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

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

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

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

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

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

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

(40) Disclosure reports filed with the commissioner of insurance under K.S.A. 40-2,156(a), and amendments thereto.

(41) All financial analysis ratios and examination synopses
concerning insurance companies that are submitted to the commissioner by
the national association of insurance commissioners' insurance regulatory
information system.

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

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

(44) The amount of franchise tax paid to the secretary of revenue or
the secretary of state by domestic corporations, foreign corporations,
domestic limited liability companies, foreign limited liability companies,
domestic limited partnership, foreign limited partnership, domestic limited
liability partnerships and foreign limited liability partnerships.

(45) Records, other than criminal investigation records, the disclosure
of which would pose a substantial likelihood of revealing security
measures that protect: (A) Systems, facilities or equipment used in the
production, transmission or distribution of energy, water or
communications services; (B) transportation and sewer or wastewater
treatment systems, facilities or equipment; or (C) private property or
persons, if the records are submitted to the agency. For purposes of this
paragraph, security means measures that protect against criminal acts
intended to intimidate or coerce the civilian population, influence
government policy by intimidation or coercion or to affect the operation of
government by disruption of public services, mass destruction,
assassination or kidnapping. Security measures include, but are not limited
to, intelligence information, tactical plans, resource deployment and
vulnerability assessments.

(46) Any information or material received by the register of deeds of
a county from military discharge papers, DD Form 214. Such papers shall
be disclosed: To the military discharger; to such discharger's immediate
family members and lineal descendants; to such discharger's heirs, agents
or assigns; to the licensed funeral director who has custody of the body of
the deceased discharger; when required by a department or agency of the
federal or state government or a political subdivision thereof; when the
form is required to perfect the claim of military service or honorable
discharge or a claim of a dependent of the discharger; and upon the written
approval of the commissioner of veterans affairs, to a person conducting
research.

(47) Information that would reveal the location of a shelter or a
safehouse or similar place where persons are provided protection from
abuse or the name, address, location or other contact information of alleged victims of stalking, domestic violence or sexual assault.

(48) Policy information provided by an insurance carrier in accordance with K.S.A. 44-532(h)(1), and amendments thereto. This exemption shall not be construed to preclude access to an individual employer's record for the purpose of verification of insurance coverage or to the department of labor for their business purposes.

(49) An individual's e-mail address, cell phone number and other contact information which has been given to the public agency for the purpose of public agency notifications or communications which are widely distributed to the public.

(50) Information provided by providers to the local collection point administrator or to the 911 coordinating council pursuant to the Kansas 911 act, and amendments thereto, upon request of the party submitting such records.

(51) Records of a public agency on a public website which are searchable by a keyword search and identify the home address or home ownership of a law enforcement officer as defined in K.S.A. 2020 Supp. 21-5111, and amendments thereto, parole officer, probation officer, court services officer or community correctional services officer. Such individual officer shall file with the custodian of such record a request to have such officer's identifying information restricted from public access on such public website. Within 10 business days of receipt of such requests, the public agency shall restrict such officer's identifying information from such public access. Such restriction shall expire after five years and such officer may file with the custodian of such record a new request for restriction at any time.

(52) Records of a public agency on a public website which are searchable by a keyword search and identify the home address or home ownership of a federal judge, a justice of the supreme court, a judge of the court of appeals, a district judge, a district magistrate judge, a municipal judge, the United States attorney for the district of Kansas, an assistant United States attorney, a special assistant United States attorney, the attorney general, an assistant attorney general, a special assistant attorney general, a county attorney, an assistant county attorney, a special assistant county attorney, a district attorney, an assistant district attorney, a special assistant district attorney, a city attorney, an assistant city attorney or a special assistant city attorney. Such person shall file with the custodian of such record a request to have such person's identifying information restricted from public access on such public website. Within 10 business days of receipt of such requests, the public agency shall restrict such person's identifying information from such public access. Such restriction shall expire after five years and such person may file with the custodian of
such record a new request for restriction at any time.

(53) Records of a public agency that would disclose the name, home address, zip code, e-mail address, phone number or cell phone number or other contact information for any person licensed to carry concealed handguns or of any person who enrolled in or completed any weapons training in order to be licensed or has made application for such license under the personal and family protection act, K.S.A. 75-7c01 et seq., and amendments thereto, shall not be disclosed unless otherwise required by law.

(54) Records of a utility concerning information about cyber security threats, attacks or general attempts to attack utility operations provided to law enforcement agencies, the state corporation commission, the federal energy regulatory commission, the department of energy, the southwest power pool, the North American electric reliability corporation, the federal communications commission or any other federal, state or regional organization that has a responsibility for the safeguarding of telecommunications, electric, potable water, waste water disposal or treatment, motor fuel or natural gas energy supply systems.

(55) Records of a public agency containing information or reports obtained and prepared by the office of the state bank commissioner in the course of licensing or examining a person engaged in money transmission business pursuant to K.S.A. 9-508 et seq., and amendments thereto, shall not be disclosed except pursuant to K.S.A. 9-513c, and amendments thereto, or unless otherwise required by law.

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser or the director of property valuation to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

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

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the
public record which that is subject to disclosure pursuant to this act. If a
public record is not subject to disclosure because it pertains to an
identifiable individual, the public agency shall delete the identifying
portions of the record and make available to the requester any remaining
portions which that are subject to disclosure pursuant to this act, unless the
request is for a record pertaining to a specific individual or to such a
limited group of individuals that the individuals' identities are reasonably
ascertainable, the public agency shall not be required to disclose those
portions of the record which that pertain to such individual or individuals.
(e) The provisions of this section shall not be construed to exempt
from public disclosure statistical information not descriptive of any
identifiable person.
(f) Notwithstanding the provisions of subsection (a), any public
record which that has been in existence more than 70 years shall be open
for inspection by any person unless disclosure of the record is specifically
prohibited or restricted by federal law, state statute or rule of the Kansas
supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and
amendments thereto.
(g) Any confidential records or information relating to security
measures provided or received under the provisions of subsection (a)(45)
shall not be subject to subpoena, discovery or other demand in any
administrative, criminal or civil action.
Sec. 3. K.S.A. 2020 Supp. 45-217 and 45-221 are hereby repealed.
Sec. 4. This act shall take effect and be in force from and after its
publication in the statute book.