

HOUSE BILL No. 2424

By Representative Benson

12-3

1 AN ACT concerning police officer-involved deaths; requiring
2 investigations; amending the open records act; amending K.S.A. 2019
3 Supp. 45-221 and repealing the existing section.
4

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

6 New Section 1. (a) As used in this section:

7 (1) "Law enforcement officer" means the same as in K.S.A. 74-5602,
8 and amendments thereto.

9 (2) "Officer-involved death" means a death of an individual that
10 results directly from an action or an omission of a law enforcement officer
11 while the law enforcement officer is on duty or while the law enforcement
12 officer is off duty but performing activities that are within the scope of
13 such officer's law enforcement duties.

14 (b) Each law enforcement agency shall have a written policy
15 regarding the investigation of officer-involved deaths that involve a law
16 enforcement officer employed by the law enforcement agency.

17 (1) Each policy must require an investigation conducted by at least
18 two investigators, one of whom is the lead investigator and neither of
19 whom is employed by a law enforcement agency that employs a law
20 enforcement officer involved in the officer-involved death.

21 (2) If the officer-involved death being investigated is traffic-related,
22 the policy must require the investigation to use a crash reconstruction unit
23 from a law enforcement agency that does not employ a law enforcement
24 officer involved in the officer-involved death being investigated, except
25 that a policy for a state law enforcement agency may allow an
26 investigation involving a law enforcement officer employed by that state
27 law enforcement agency to use a crash reconstruction unit from the same
28 state law enforcement agency.

29 (3) Each policy may allow an internal investigation into the officer-
30 involved death, if the internal investigation does not interfere with the
31 investigation conducted under subsection (a).

32 (4) Compensation for participation in an investigation shall be
33 determined in a manner consistent with mutual aid agreements.

34 (c) (1) The investigators conducting the investigation shall provide a
35 complete report to the county or district attorney of the county in which
36 the officer-involved death occurred.

1 (2) If the county or district attorney determines that there is no basis
2 to prosecute the law enforcement officer involved in the officer-involved
3 death, the investigators conducting the investigation shall release the
4 report with redactions of information otherwise protected from disclosure.
5 No provision of the open records act, K.S.A. 45-215 et seq., and
6 amendments thereto, shall be used to prevent the disclosure of any report
7 required to be disclosed under this section.

8 Sec. 2. K.S.A. 2019 Supp. 45-221 is hereby amended to read as
9 follows: 45-221. (a) Except to the extent disclosure is otherwise required
10 by law, a public agency shall not be required to disclose:

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

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

23 (3) Medical, psychiatric, psychological or alcoholism or drug
24 dependency treatment records ~~which~~ *that* pertain to identifiable patients.

25 (4) *Except as provided in section 1, and amendments thereto,*
26 personnel records, performance ratings or individually identifiable records
27 pertaining to employees or applicants for employment, except that this
28 exemption shall not apply to the names, positions, salaries or actual
29 compensation employment contracts or employment-related contracts or
30 agreements and lengths of service of officers and employees of public
31 agencies once they are employed as such.

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

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

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

40 (8) Information ~~which~~ *that* would reveal the identity of an individual
41 who lawfully makes a donation to a public agency, if anonymity of the
42 donor is a condition of the donation, except if the donation is intended for
43 or restricted to providing remuneration or personal tangible benefit to a

1 named public officer or employee.

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

6 (10) Criminal investigation records, except as provided herein *and in*
7 *section 1, and amendments thereto*. The district court, in an action brought
8 pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure
9 of such records, subject to such conditions as the court may impose, if the
10 court finds that disclosure:

11 (A) Is in the public interest;

12 (B) would not interfere with any prospective law enforcement action,
13 criminal investigation or prosecution;

14 (C) would not reveal the identity of any confidential source or
15 undercover agent;

16 (D) would not reveal confidential investigative techniques or
17 procedures not known to the general public;

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

19 (F) would not reveal the name, address, phone number or any other
20 information ~~which~~ *that* specifically and individually identifies the victim
21 of any sexual offense in article 35 of chapter 21 of the Kansas Statutes
22 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
23 Statutes Annotated, and amendments thereto.

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

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

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

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

1 (14) Correspondence between a public agency and a private
2 individual, other than correspondence ~~which~~ *that* is intended to give notice
3 of an action, policy or determination relating to any regulatory, supervisory
4 or enforcement responsibility of the public agency or ~~which~~ *that* is widely
5 distributed to the public by a public agency and is not specifically in
6 response to communications from such a private individual.

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

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

13 (A) The information ~~which~~ *that* the agency maintains on computer
14 facilities; and

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

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

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

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

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

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

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

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

43 (22) Records of a public agency having legislative powers, which

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

1 and

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

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

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

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

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

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

26 (35) Any report or record ~~which~~ that is made pursuant to K.S.A. 65-
27 4922, 65-4923 or 65-4924, and amendments thereto, and ~~which~~ that is
28 privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments
29 thereto.

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

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

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

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

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

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

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

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

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

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

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

43 (47) Information that would reveal the location of a shelter or a

1 safehouse or similar place where persons are provided protection from
2 abuse or the name, address, location or other contact information of
3 alleged victims of stalking, domestic violence or sexual assault.

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

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

13 (50) Information provided by providers to the local collection point
14 administrator or to the 911 coordinating council pursuant to the Kansas
15 911 act, and amendments thereto, upon request of the party submitting
16 such records.

17 (51) Records of a public agency on a public website ~~which~~ that are
18 searchable by a keyword search and identify the home address or home
19 ownership of a law enforcement officer as defined in K.S.A. 2019 Supp.
20 21-5111, and amendments thereto, parole officer, probation officer, court
21 services officer or community correctional services officer. Such
22 individual officer shall file with the custodian of such record a request to
23 have such officer's identifying information restricted from public access on
24 such public website. Within 10 business days of receipt of such requests,
25 the public agency shall restrict such officer's identifying information from
26 such public access. Such restriction shall expire after five years and such
27 officer may file with the custodian of such record a new request for
28 restriction at any time.

29 (52) Records of a public agency on a public website ~~which~~ that are
30 searchable by a keyword search and identify the home address or home
31 ownership of a federal judge, a justice of the supreme court, a judge of the
32 court of appeals, a district judge, a district magistrate judge, a municipal
33 judge, the United States attorney for the district of Kansas, an assistant
34 United States attorney, a special assistant United States attorney, the
35 attorney general, an assistant attorney general, a special assistant attorney
36 general, a county attorney, an assistant county attorney, a special assistant
37 county attorney, a district attorney, an assistant district attorney, a special
38 assistant district attorney, a city attorney, an assistant city attorney or a
39 special assistant city attorney. Such person shall file with the custodian of
40 such record a request to have such person's identifying information
41 restricted from public access on such public website. Within 10 business
42 days of receipt of such requests, the public agency shall restrict such
43 person's identifying information from such public access. Such restriction

1 shall expire after five years and such person may file with the custodian of
2 such record a new request for restriction at any time.

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

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

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

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

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

42 (d) If a public record contains material ~~which~~ *that* is not subject to
43 disclosure pursuant to this act, the public agency shall separate or delete

1 such material and make available to the requester that material in the
2 public record ~~which~~ *that* is subject to disclosure pursuant to this act. If a
3 public record is not subject to disclosure because it pertains to an
4 identifiable individual, the public agency shall delete the identifying
5 portions of the record and make available to the requester any remaining
6 portions ~~which~~ *that* are subject to disclosure pursuant to this act, unless the
7 request is for a record pertaining to a specific individual or to such a
8 limited group of individuals that the individuals' identities are reasonably
9 ascertainable, the public agency shall not be required to disclose those
10 portions of the record ~~which~~ *that* pertain to such individual or individuals.

11 (e) The provisions of this section shall not be construed to exempt
12 from public disclosure statistical information not descriptive of any
13 identifiable person.

14 (f) Notwithstanding the provisions of subsection (a), any public
15 record ~~which~~ *that* has been in existence more than 70 years shall be open
16 for inspection by any person unless disclosure of the record is specifically
17 prohibited or restricted by federal law, state statute or rule of the Kansas
18 supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and
19 amendments thereto.

20 (g) Any confidential records or information relating to security
21 measures provided or received under the provisions of subsection (a)(45)
22 shall not be subject to subpoena, discovery or other demand in any
23 administrative, criminal or civil action.

24 Sec. 3. K.S.A. 2019 Supp. 45-221 is hereby repealed.

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