

As Amended by Senate Committee

Session of 2015

SENATE BILL No. 128

By Committee on Corrections and Juvenile Justice

2-2

1 AN ACT concerning the Kansas open records act; relating to municipal
2 judges; city attorneys; amending K.S.A. 2014 Supp. 45-221 and
3 repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2014 Supp. 45-221 is hereby amended to read as
7 follows: 45-221. (a) Except to the extent disclosure is otherwise required
8 by law, a public agency shall not be required to disclose:

9 (1) Records the disclosure of which is specifically prohibited or
10 restricted by federal law, state statute or rule of the Kansas supreme court
11 or rule of the senate committee on confirmation oversight relating to
12 information submitted to the committee pursuant to K.S.A. 2014 Supp. 75-
13 4315d, and amendments thereto, or the disclosure of which is prohibited or
14 restricted pursuant to specific authorization of federal law, state statute or
15 rule of the Kansas supreme court or rule of the senate committee on
16 confirmation oversight relating to information submitted to the committee
17 pursuant to K.S.A. 2014 Supp. 75-4315d, and amendments thereto, to
18 restrict or prohibit disclosure.

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

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

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

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

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

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

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

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

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

14 (A) Is in the public interest;

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

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

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

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

22 (F) would not reveal the name, address, phone number or any other
23 information which specifically and individually identifies the victim of any
24 sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated,
25 prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes
26 Annotated, 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
33 violations 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 a
38 public agency, or plans, drawings, specifications or related information for
39 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 of
3 property, prior to the award of formal contracts therefor.

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

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

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

16 (A) The information which the agency maintains on computer
17 facilities; 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
21 submitted 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
27 commission requires to be filed by persons who have drilled or caused to
28 be 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
30 limited by rules and regulations of the state corporation commission.

31 (20) Notes, preliminary drafts, research data in the process of
32 analysis, unfunded grant proposals, memoranda, recommendations or
33 other records in which opinions are expressed or policies or actions are
34 proposed, 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
38 records pertain to proposed legislation or amendments to proposed
39 legislation, except that this exemption shall not apply when such records
40 are:

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

43 (B) distributed to a majority of a quorum of any body which has

1 authority to take action or make recommendations to the public agency
2 with regard to the matters to which such records pertain.

3 (22) Records of a public agency having legislative powers, which
4 records pertain to research prepared for one or more members of such
5 agency, except that this exemption shall not apply when such records are:

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

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

11 (23) Library patron and circulation records which pertain to
12 identifiable individuals.

13 (24) Records which are compiled for census or research purposes and
14 which pertain to identifiable individuals.

15 (25) Records which represent and constitute the work product of an
16 attorney.

17 (26) Records of a utility or other public service pertaining to
18 individually identifiable residential customers of the utility or service.

19 (27) Specifications for competitive bidding, until the specifications
20 are officially approved by the public agency.

21 (28) Sealed bids and related documents, until a bid is accepted or all
22 bids rejected.

23 (29) Correctional records pertaining to an identifiable inmate or
24 release, except that:

25 (A) The name; photograph and other identifying information;
26 sentence data; parole eligibility date; custody or supervision level;
27 disciplinary record; supervision violations; conditions of supervision,
28 excluding requirements pertaining to mental health or substance abuse
29 counseling; location of facility where incarcerated or location of parole
30 office maintaining supervision and address of a releasee whose crime was
31 committed after the effective date of this act shall be subject to disclosure
32 to any person other than another inmate or releasee, except that the
33 disclosure of the location of an inmate transferred to another state pursuant
34 to the interstate corrections compact shall be at the discretion of the
35 secretary of corrections;

36 (B) the attorney general, law enforcement agencies, counsel for the
37 inmate to whom the record pertains and any county or district attorney
38 shall have access to correctional records to the extent otherwise permitted
39 by law;

40 (C) the information provided to the law enforcement agency pursuant
41 to the sex offender registration act, K.S.A. 22-4901 et seq., and
42 amendments thereto, shall be subject to disclosure to any person, except
43 that the name, address, telephone number or any other information which

1 specifically and individually identifies the victim of any offender required
2 to register as provided by the Kansas offender registration act, K.S.A. 22-
3 4901 et seq., and amendments thereto, shall not be disclosed; and

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

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

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

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

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

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

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

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

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

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

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

43 (40) Disclosure reports filed with the commissioner of insurance

1 under ~~subsection (a)~~ of K.S.A. 40-2,156(a), and amendments thereto.

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

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

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

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

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

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

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

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

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

15 (50) Information provided by providers to the local collection point
16 administrator or to the 911 coordinating council pursuant to the Kansas
17 911 act, and amendments thereto, upon request of the party submitting
18 such records.

19 (51) Records of a public agency on a public website which are
20 searchable by a keyword search and identify the home address or home
21 ownership of a law enforcement officer as defined in K.S.A. 2014 Supp.
22 21-5111, and amendments thereto, parole officer, probation officer, court
23 services officer or community correctional services officer. Such
24 individual officer shall file with the custodian of such record a request to
25 have such officer's identifying information restricted from public access on
26 such public website. Within 10 business days of receipt of such requests,
27 the public agency shall restrict such officer's identifying information from
28 such public access. Such restriction shall expire after five years and such
29 officer may file with the custodian of such record a new request for
30 restriction at any time.

31 (52) Records of a public agency on a public website which are
32 searchable by a keyword search and identify the home address or home
33 ownership of a federal judge, a justice of the supreme court, a judge of the
34 court of appeals, a district judge, a district magistrate judge, *a municipal*
35 *judge*, the United States attorney for the district of Kansas, an assistant
36 United States attorney, *a special assistant United States attorney*, the
37 attorney general, an assistant attorney general, a ~~district attorney or county~~
38 ~~attorney or, an assistant district attorney or assistant county attorney or a~~
39 ~~city attorney or an assistant city attorney~~ *special assistant attorney*
40 *general, a county attorney, an assistant county attorney, a special*
41 *assistant county attorney, a district attorney, an assistant district*
42 *attorney, a special assistant district attorney, a city attorney, an assistant*
43 *city attorney or a special assistant city attorney*. Such person shall file

1 with the custodian of such record a request to have such person's
2 identifying information restricted from public access on such public
3 website. Within 10 business days of receipt of such requests, the public
4 agency shall restrict such person's identifying information from such
5 public access. Such restriction shall expire after five years and such person
6 may file with the custodian of such record a new request for restriction at
7 any time.

8 (53) Records of a public agency that would disclose the name, home
9 address, zip code, e-mail address, phone number or cell phone number or
10 other contact information for any person licensed to carry concealed
11 handguns or of any person who enrolled in or completed any weapons
12 training in order to be licensed or has made application for such license
13 under the personal and family protection act, K.S.A. 2014 Supp. 75-7c01
14 et seq., and amendments thereto, shall not be disclosed unless otherwise
15 required by law.

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

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

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

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

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

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

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

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

29 Sec. 2. K.S.A. 2014 Supp. 45-221 is hereby repealed.

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