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MEMORANDUM


03/03/11

To: Special Committee on Judiciary
From: Jason Thompson, Assistant Revisor
Date: September 13, 2010
Subject: Kansas Open Records Act (KORA)

The committee is asked to conduct any statutorily required legislative review of existing exceptions to the Kansas Open Records Act (KORA) that are scheduled for expiration in 2011. In recent years, the Legislature has undertaken a comprehensive review of KORA in order to determine if any statutory exceptions to the law are unnecessary and could be discontinued. The 2010 Legislature extended the existence of 206 statutory exceptions to KORA until July 1, 2015.

K.S.A. 45-229 provides that all exceptions to disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and any new exception created by the legislature or substantial amendment to an exception, shall expire five years after creation or amendment, unless the legislature acts to continue the exception. In the year prior to the expiration, the Revisor of Statutes is required to certify the language and citation of each exception to the Speaker of the House of Representatives and the President of the Senate.

Subsection (h) further requires the legislature to:

“(1) ...review the exception before its scheduled expiration and consider as part of the review process the following:

- (A) What specific records are affected by the exception;
- (B) whom does the exception uniquely affect, as opposed to the general public;
- (C) what is the identifiable public purpose or goal of the exception;
- (D) whether the information contained in the records may be obtained readily by alternative means and how it may be obtained;

(2) An exception may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An

identifiable public purpose is served if the legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exception and if the exception:

(A) Allows the effective and efficient administration of a governmental program, which administration would be significantly impaired without the exception;

(B) protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. Only information that would identify the individuals may be excepted under this paragraph; or

(C) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(3) Records made before the date of the expiration of an exception shall be subject to disclosure as otherwise provided by law. In deciding whether the records shall be made public, the legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exception of the type specified in paragraph (2)(B) or (2)(C) of this subsection (h) would occur if the records were made public.”

Attachment A lists the 28 existing statutory exceptions to the Kansas Open Records Act that are scheduled for expiration in 2011 and Attachment B provides a summary of each section.

KANSAS OPEN RECORDS ACT REVIEW - 2010

K.S.A. 45-229; Certified for Calendar Year 2010; Exceptions Expire July 1, 2011

Substantially Amended Exceptions (2006)

22-4906	Criminal offender registration
22-4909	Criminal offender registration
44-1132	Discrimination in employment
60-3333	Environmental audit report
75-712c	Reports of missing persons

New Exceptions (2006)

12-5358	Audits of VoIP providers
12-5611	Topeka/Shawnee county riverfront authority
38-2310	Kansas juvenile justice code records
38-2311	Juvenile treatment records
38-2326	Juvenile offender information system
65-6154	Emergency medical services reports
71-218	Community colleges, employee evaluation documents
75-457	Substitute mailing addresses
75-723	AG abuse, neglect and exploitation of persons unit
75-7c06	Concealed firearms records

New Exceptions (2006) – Expiration by Separate Statute

9-513c	Money transmission business
40-2,118	Fraudulent insurance acts

Exceptions Listed in K.S.A. 45-229(j)

(continued in existence in section 1 of chapter 87 of the 2006 Session Laws)

1-501	Accounting firms, peer review documents
9-1303	Banking code, information sharing with commissioner
12-4516a	Expungement of city ordinance violations
38-1692	Repealed January 1, 2007 (Juvenile Justice Code revised)
39-970	Adult care home licensure act
40-4913	Insurance agents, termination reports and documents
65-525	Child care facilities, maternity centers, family day care homes
65-5117	Home health agency
65-6016	Infectious diseases, disclosure to corrections employees
65-6017	Medical tests or reports on offenders in custody
74-7508	Behavioral sciences regulatory board documents

KANSAS OPEN RECORDS ACT EXCEPTIONS SUMMARY - 2010

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Section	Who exception covers (provides protection to):	Government program affected:	Type of information excepted:	Notes & comments:
1-501	firms that provide certain financial statement services	Board of Accountancy	any reports, statements, memoranda, transcripts, findings, records, or working papers prepared and any opinions formulated, in connection with any peer review	
9-513c	persons engaged in money transmission business	State Bank Commissioner	all information or reports obtained by the commissioner in the course of licensing or examining a person engaged in money transmission business	
9-1303	financial institutions	State Bank Commissioner	information sharing and exchange program with a functional regulatory agency that has overlapping regulatory jurisdiction with the department, with respect to all or part of an affiliated group that includes a financial institution	
12-4516a	persons with expunged city ordinance violations	records custodians	whenever records have been expunged, custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the person whose arrest record was expunged	

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12-5358	VoIP providers (voice over internet protocol)	Secretary of Administration	information provided pursuant to the VoIP enhanced 911 act or the wireless enhanced 911 act treated as proprietary records withheld from the public upon request of the party submitting such records	
12-5611	Topeka/Shawnee county riverfront authority board	Topeka/Shawnee county riverfront authority	documents and records kept or prepared by the board for use in negotiations, actions or proceedings to which the authority is a party.	
22-4906	certain juvenile offenders (sexually violent crime, but not off-grid or severity level 1)	sheriff's offices, KBI	court may order certain juvenile offenders to register with the sheriff, but such registration information shall not be open to inspection by the public or posted on any internet website	
22-4909	crime victims	sheriff's offices, KBI	name, address, telephone number, or other information that specifically/individually identifies victim of offender required to register, other than to law enforcement agencies	
38-1692				Repealed January 1, 2007 (with enactment of Revised Juvenile Justice Code)
38-2310	certain juveniles	law enforcement officers and agencies and municipal courts	limited disclosure of records when offender under 14; same disclosure as for adults when offender over 14; information identifying victims and alleged victims of sex offenses shall not be disclosed or open to public inspection under any circumstances; records, reports and information obtained as part of juvenile intake and assessment process shall be confidential	

38-2311	certain juveniles	courts	limited disclosure of diagnostic, treatment or medical records	
38-2326	juvenile offenders	law enforcement agencies, KBI	limited disclosure of juvenile offender information maintained in the juvenile offender information system	
39-970	applicants for employment in adult care homes	adult care home operators	criminal history record information received by operators	
40-2,118	insurers	Commissioner of Insurance	any antiraid plan, or any amendment thereof, submitted to the commissioner for informational purposes only	
40-4913	insurers	Commissioner of Insurance	any document, material or other information in the control or possession of the department that is furnished by an insurance entity or an employee or agent thereof acting on behalf of such insurance entity, or obtained by the insurance commissioner in an investigation	
44-1132	victims of domestic violence or sexual assault	employers	To the extent allowed by law, employer shall maintain the confidentiality of any employee requesting leave for certain purposes related to domestic violence or sexual assault, as well as the confidentiality of any supporting documentation provided by the employee to the employer relating to such leave	
60-3333	businesses	government employees and regulatory agencies	material that is included in an environmental audit report generated during an environmental audit (a voluntary, internal assessment, evaluation or review)	

65-525	child care facilities, maternity centers, family day care homes	Department of Health and Environment	records in the possession of the department of health and environment or its agents regarding child care facilities, maternity centers or family day care homes; records containing the name, address and telephone number of a child care facility, maternity center or family day care home in the possession of the department of health and environment or its agents	
65-5117	applicants for employment in home health agency	home health agency operators	criminal history record information received by operators	
65-6016	persons in custody of the commissioner of juvenile justice or the secretary of corrections	corrections employees and physicians	a physician performing medical or surgical procedures on a patient who the physician knows has an infectious disease or has had a positive reaction to an infectious disease test may disclose such information to corrections employees who have been or will be placed in contact with body fluid of such patient; information shall be confidential and shall not be disclosed by corrections employees except as may be necessary in providing treatment for such patient	
65-6017	persons in custody of the commissioner of juvenile justice or the secretary of corrections	corrections employees and courts	results of tests or reports, or information therein, obtained under court order when a corrections employee has been placed in contact with body fluid from one or more offenders while performing duties within the scope of such employee's duties as a corrections employee	

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65-6154	persons using emergency medical services	Board of Emergency Medical Services	limited disclosure of emergency medical services information provided to the board	
71-218	full-time employees of community colleges	board of trustees of a community college	Except by order of a court of competent jurisdiction, evaluation documents and responses thereto shall be available only to the evaluated employee, the board, the appropriate administrative staff members designated by the board, the community college attorney upon request of the board, the board and the administrative staff of any community college to which such employee applies for employment, and other persons specified, in writing, by the employee to the employee's board.	
74-7508	practitioners of the behavioral sciences	behavioral sciences regulatory board	limited disclosure of any complaint or report, record or other information relating to a complaint which is received, obtained or maintained by the behavioral sciences regulatory board	
75-457	victims of domestic violence, sexual assault, trafficking or stalking	Secretary of State	any records in a program participant's file except: if requested by a law enforcement agency; if directed by a court order; or if requested by a state or local agency, to verify the participation of a specific program participant, in which case the secretary may only confirm participation in the program	

75-712c	victims of domestic violence or sexual assault	law enforcement agencies	The law enforcement agency investigating the report shall not give information to the reporting party if the law enforcement agency has reason to believe the missing person is an adult or an emancipated minor and is staying at or has made contact with a domestic violence or sexual assault program and does not expressly consent to the release of this information.	
75-723	abused, neglected, exploited persons	Attorney General; abuse, neglect and exploitation of persons unit	the information obtained and the investigations conducted by the unit shall be confidential as required by state or federal law	
75-7c06	licensees under the personal and family protection act	Attorney General	persons applying for licenses or persons who have had a license denied shall be confidential and shall not be disclosed in a manner which enables identification of any such person	

