



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT  
ATTORNEY GENERAL

MEMORIAL HALL  
120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
WWW.AG.KS.GOV

**Neutral Testimony on House Bill 2332  
Relating to disclosure of electronic communications and electronically stored data**

**Presented to the House Committee on Government, Technology and Security  
By Deputy Attorney General Athena Andaya**

**March 6, 2017**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to provide this neutral testimony on House Bill 2332. This bill represents a significant improvement over a similar bill introduced last year, 2016 House Bill 2715, about which our office raised significant concerns regarding how the bill would hamper our ability to use civil subpoenas in enforcing laws such as the Kansas Consumer Protection Act.

This bill represents a much narrower focus on the disclosure of third-party electronic records. However, in reviewing this bill, we have identified some questions about how this bill would interact with other statutes regarding government records, namely the Kansas Open Records Act (KORA) and records retention laws. We would ask the committee to consider and clarify the bill before you to ensure the proper interpretation of the interaction between this bill and existing records laws.

For example, questions that have been raised include:

- Would this bill require a state agency or local government entity to obtain express permission from an employee prior to releasing one of that employee's emails under KORA?
- Would an agency be required to obtain express permission from persons involved in an electronic record before transferring it to the Kansas State Historical Society in compliance with records retention policies?

We remain concerned that passage of this bill in its current form may continue to raise such questions, and may require further interpretation by Attorney General's Opinions or costly litigation.

We appreciate the committee's consideration of these issues, and potential clarification of the Legislature's intent, as you deliberate on the bill.

###