

SENATE BILL No. 454

By Committee on Federal and State Affairs

2-17

cybersecurity assessments, cybersecurity plans and
cybersecurity vulnerabilities

45-217 and

sections

See attached insert

And by renumbering sections accordingly

1 AN ACT concerning open records; creating exemptions in the open
2 records act for ~~election security records and cyber security records~~
3 amending K.S.A. 2019 Supp. 45-221 and repealing the existing ~~section~~
4

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

6 Section 1. K.S.A. 2019 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~~ *that* 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. 75-4315d, and
13 amendments thereto, or the disclosure of which is prohibited or restricted
14 pursuant to specific authorization of federal law, state statute or rule of the
15 Kansas supreme court or rule of the senate committee on confirmation
16 oversight relating to information submitted to the committee pursuant to
17 K.S.A. 75-4315d, and amendments thereto, to restrict or prohibit
18 disclosure.

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

21 (3) Medical, psychiatric, psychological or alcoholism or drug
22 dependency treatment records ~~which~~ *that* 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~~ *that* would reveal the identity of any
30 undercover 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~~ that would reveal the identity of an individual
2 who lawfully makes a donation to a public agency, if anonymity of the
3 donor is a condition of the donation, except if the donation is intended for
4 or 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~~ that specifically and individually identifies the victim
24 of any sexual offense in article 35 of chapter 21 of the Kansas Statutes
25 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
26 Statutes 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~~ that is used for purposes requiring security
40 measures in or around the building or facility or ~~which~~ that 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.

if disclosure would jeopardize public safety, including but not limited to records of cybersecurity plans, cybersecurity assessments, and cybersecurity vulnerabilities or procedures related to cybersecurity plans, assessments, and vulnerabilities

1 days of receipt of such requests, the public agency shall restrict such
2 person's identifying information from such public access. Such restriction
3 shall expire after five years and such person may file with the custodian of
4 such record a new request for restriction at any time.

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

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

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

28 ~~[(56) Records of election security information or procedures,~~
29 ~~including:~~

30 ~~(A) Records of measures taken to protect elections and voting~~
31 ~~infrastructure from tampering and infiltration;~~

32 ~~(B) records of threats, attacks on and vulnerabilities of voting~~
33 ~~equipment, election office networks and practices, voter registration~~
34 ~~databases and election or voting facilities; and~~

35 ~~(C) records of audits and assessments of election security.~~

36 ~~(57) Records of a public agency concerning information about cyber~~
37 ~~security threats, including:~~

38 ~~(A) Records of any cyber attack or cyber breach of a public agency;~~

39 ~~(B) records of any defensive measures considered or employed to~~
40 ~~detect, prevent or mitigate a known or suspected cyber security threat to a~~
41 ~~public agency; and~~

42 ~~(C) records of any cyber security vulnerability at a public agency.]~~

43 (b) Except to the extent disclosure is otherwise required by law or as

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Section 1. K.S.A. 2019 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. 2019 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. 2019 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" includes, but is not limited to, information about a person's information systems, network security,

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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.

~~(e)~~(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 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.

~~(g)~~(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

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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)(1), "public record" shall not include:

(A) Records which 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 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 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 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.