

TESTIMONY OF CALEB SMITH
INCLUSIVE CAMPAIGN DIRECTOR
KANSAS APPLESEED CENTER FOR LAW AND JUSTICE
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SENATE COMMITTEE ON TRANSPARENCY AND ETHICS
IN SUPPORT OF SB 386
FEBRUARY 14, 2022

Members of the Senate Committee on Transparency and Ethics:

My name is Caleb Smith; I am a Campaign Director for Kansas Appleseed Center for Law and Justice, a nonprofit, nonpartisan organization dedicated to the belief that Kansans, working together, can build a state full of thriving, inclusive, and just communities.

Kansas Appleseed supports SB 386. The ability to access public records is essential to a well-functioning and transparent government. The Kansas Open Records Act (KORA) states that it is “the public policy of the state that public records shall be open for inspection...and this act shall be liberally construed and applied to promote such policy.”¹ Limiting fees imposed on KORA requests will help reduce an important barrier to transparency.

Kansas has been labeled by scholars a “transparency desert.”² The Center for Public Integrity has given Kansas an “F” grade and ranked us 43rd overall among for state transparency.³ High fees for fulfilling KORA requests have been weaponized to prevent access to valuable information. Last year KAKE received a bill of over \$40,000 when they asked for records about potential fraudulent unemployment claims.⁴ Media requests for records from the City of Frontenac regarding the firing of city employees led to requested fees of over \$7,000.⁵ Following the deaths of children under the care of the Kansas Department for Children and Families, a request for two days’ worth of emails for six employees was met with a fee charge of nearly \$3,000.⁶ Kansas Appleseed has also faced some of these high fees in our KORA requests.

¹ K.S.A. 45-216 (a)

² Koningisor, C. “Transparency Deserts.” Northwestern University Law Review. 2020.
<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1409&context=nulr>

³ Stumpe, J. “Kansas gets F grade in 2015 State Integrity Investigation.” The Center for Public Integrity. 2015.
<https://publicintegrity.org/politics/state-politics/state-integrity-investigation/kansas-gets-f-grade-in-2015-state-integrity-investigation/>

⁴ Pedraza, P. “\$40,000 for public records? The KAKE News Investigates fight with KDOL over your unemployment.” KAKE.com. Apr. 26, 2021.
<https://www.kake.com/story/43731092/dollar40000-for-public-records-the-kake-news-investigates-fight-with-kdol-over-your-unemployment>

⁵ Riley, J. “State-level groups urge Frontenac to reconsider public record fees.” The Morning Sun. Oct 1, 2019.
<https://web.archive.org/web/20200404220720/https://www.morningsun.net/news/20191001/state-level-groups-urge-frontenac-to-reconsider-public-record-fees>

⁶ Koningisor, C. “Transparency Deserts.” Northwestern University Law Review. 2020. P. 70-71.
<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1409&context=nulr>

This bill follows the guidance in a draft version of open records guidelines published on the Kansas Attorney General’s website.⁷ From the guidance: “If charging a fee for staff time, a public agency should at all times charge the lowest possible fee and, in any event, should never charge a fee that exceeds the actual cost of the staff time expended.”

This bill puts in place best practices for limiting the fee barrier to transparency. It limits the charging of staff time to the lowest rate of a person qualified to fulfill the request, prevents fees from being charged just to determine if a record exists, and provides for the discretionary waiver of fees if requested records are in the public interest. SB 386 will improve the quality of our government, it will enhance public trust, increase public engagement, and promote efficiency and effectiveness. It will move Kansas one step closer to ensuring an inclusive and just state full of thriving citizens.

For these reasons, Kansas Appleseed recommends passage of SB 386.

⁷ Kansas Attorney General. “Guidance Document - Kansas Open Records Act (KORA) Fees for Cos of Staff Time.” 2020.
https://ag.ks.gov/docs/default-source/publications/draft-kora-fees-guidance-document.pdf?sfvrsn=599dac1a_6