

SENATE BILL No. 386

By Committee on Ways and Means

1-25

PROPOSED AMENDMENT	3/2/2022
(WITH ATTACHMENT)	
Senate Committee on Transparency and Ethics	
Permitting records custodians to refuse access to records requested by a party in litigation against the public agency that is attempting to circumvent discovery rules	
Charles Reimer Office of Revisor of Statutes	

1 AN ACT concerning the Kansas open records act; relating to copies of
 2 records; limiting fees charged for copying and staff time; providing for
 3 waiver or reduction of such fees; amending K.S.A. 45-219 and
 4 repealing the existing section.

Conforming changes
to title

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

7 Section 1. K.S.A. 45-219 is hereby amended to read as follows: 45-
 8 219. (a) (1) Any person may make abstracts or obtain copies of any public
 9 record to which such person has access under this act.

10 (2) If copies are requested, the public agency may require a written
 11 request and advance payment of the prescribed fee *for staff time required*
 12 *to provide access to or furnish copies of public records.*

Insert as Section 1 new
section amending K.S.A.
48-218, attached.

Renumber sections

13 (3) A public agency ~~shall not be~~ *is not* required to provide copies of
 14 *public records maintained on computer facilities*, radio or recording tapes
 15 or discs, video tapes or films, pictures, slides, graphics, illustrations or
 16 similar audio or visual items or devices, unless: (A) *The agency has the*
 17 *means to make copies; or (B) such items or devices were shown or played*
 18 *to a public meeting of the governing body thereof, but the. A public agency*
 19 ~~shall not be~~ *is not* required to provide such items or devices ~~which that~~ *are*
 20 copyrighted by a person other than the public agency.

21 (b) Copies of public records shall be made while the records are in
 22 the possession, custody and control of the custodian or a person designated
 23 by the custodian and shall be made under the supervision of such
 24 custodian or person. When practical, copies shall be made in the place
 25 where the records are kept. If it is impractical to do so, the custodian shall
 26 allow arrangements to be made for use of other facilities. If it is necessary
 27 to use other facilities for copying, the cost thereof shall be paid by the
 28 person desiring a copy of the records. In addition, the public agency may
 29 charge the same fee for the services rendered in supervising the copying as
 30 for furnishing copies under subsection (c) and may establish a reasonable
 31 schedule of times for making copies at other facilities.

32 (c) Except as provided by subsection (f), or where fees for inspection
 33 or for copies of a public record are prescribed by statute, each public
 34 agency may prescribe reasonable fees for providing access to or furnishing
 35 copies of public records, subject to the following:

36 (1) In the case of fees for copies of records, the fees shall not exceed

1 the actual cost of ~~furnishing copies~~ copying, including the cost of staff
2 time required to make the information available.

3 (2) In the case of fees for providing access to records maintained on
4 computer facilities, the fees shall include only the cost of any computer
5 services, including staff time required.

6 (3) Fees for access to or copies of public records of public agencies
7 within the legislative branch of the state government shall be established in
8 accordance with K.S.A. 46-1207a, and amendments thereto.

9 (4) Fees for access to or copies of public records of public agencies
10 within the judicial branch of the state government shall be established in
11 accordance with rules of the supreme court.

12 (5) Fees for access to or copies of public records of a public agency
13 within the executive branch of the state government shall be established by
14 the agency head. Any person requesting records may appeal the
15 reasonableness of the fees charged for providing access to or furnishing
16 copies of such records to the secretary of administration whose decision
17 shall be final. A fee for copies of public records ~~which~~ that is equal to or
18 less than \$.25 per page shall be deemed a reasonable fee.

19 (6) *In the case of fees for staff time required to make records*
20 *available, the rate shall not exceed the lowest hourly rate of the person*
21 *who is qualified to provide the requested records.*

22 (7) *Notwithstanding any other provision of law, a fee shall not be*
23 *charged for a search to determine whether the requested records exist.*

24 (8) *The custodian may exercise discretion to waive or reduce any fee*
25 *described in this section if the waiver or reduction of the fee would be in*
26 *the public interest because disclosure of the requested records is: (A)*
27 *Likely to contribute significantly to public understanding of the operations*
28 *or activities of the government; and (B) not primarily in the commercial*
29 *interest of the person requesting the records.*

30 (d) Except as otherwise authorized pursuant to K.S.A. 75-4215, and
31 amendments thereto, each public agency within the executive branch of
32 the state government shall remit all moneys received by or for it from fees
33 charged pursuant to this section to the state treasurer in accordance with
34 K.S.A. 75-4215, and amendments thereto. Unless otherwise specifically
35 provided by law, the state treasurer shall deposit the entire amount thereof
36 in the state treasury and credit the same to the state general fund or an
37 appropriate fee fund as determined by the agency head.

38 (e) Each public agency of a political or taxing subdivision shall remit
39 all moneys received by or for it from fees charged pursuant to this act to
40 the treasurer of such political or taxing subdivision at least monthly. Upon
41 receipt of any such moneys, such treasurer shall deposit the entire amount
42 thereof in the treasury of the political or taxing subdivision and credit the
43 same to the general fund thereof, unless otherwise specifically provided by

1 law.

2 (f) Any person who is a certified shorthand reporter may charge fees
3 for transcripts of such person's notes of judicial or administrative
4 proceedings in accordance with rates established pursuant to rules of the
5 Kansas supreme court.

6 (g) Nothing in the open records act shall require a public agency to
7 electronically make copies of public records by allowing a person to obtain
8 copies of a public record by inserting, connecting or otherwise attaching
9 an electronic device provided by such person to the computer or other
10 electronic device of the public agency.

11 Sec. 2. K.S.A. 45-219 is hereby repealed.

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

Conforming changes to repeal K.S.A.
45-218

Attachment to Balloon Amending SB 386

Section 1.

45-218. Inspection of records; request; response; refusal, when; fees. (a) All public records shall be open for inspection by any person, except as otherwise provided by this act, and suitable facilities shall be made available by each public agency for this purpose. No person shall removal* original copies of public records from the office of any public agency without the written permission of the custodian of the record.

(b) Upon request in accordance with procedures adopted under K.S.A. 45-220, any person may inspect public records during the regular office hours of the public agency and during any additional hours established by the public agency pursuant to K.S.A. 45-220 .

(c) If the person to whom the request is directed is not the custodian of the public record requested, such person shall so notify the requester and shall furnish the name and location of the custodian of the public record, if known to or readily ascertainable by such person.

(d) Each request for access to a public record shall be acted upon as soon as possible, but not later than the end of the third business day following the date that the request is received. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. If the request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester not later than the end of the third business day following the date that the request for the statement is received.

(e) The custodian may refuse to provide access to a public record, or to permit inspection, if a request places an unreasonable burden in producing public records ~~or~~, if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency or if the custodian has reason to believe that the request is intended to permit a party in litigation with the public agency to gain access to records outside of the discovery process. However, refusal under this subsection must be sustained by preponderance of the evidence.

(f) A public agency may charge and require advance payment of a fee for providing access to or furnishing copies of public records, subject to K.S.A. 45-219 .