

March 11, 2013

Dear Senators:

I am writing in support of Senate Bill 10. With the passage of KORA, this state has already recognized the value of an open and transparent government. Government agencies should be proud of the work they do, and they should welcome review by interested citizens. The government, starting with the federal and ending with the localities, is for the people and by the people, which is why Open Records are imperative to insure the workings of our democracy.

The Kansas Legislature should remove the charge for staff time in producing documents under the Kansas Open Records Act. One of the best ways to insure the government is working for its citizens, rather than against them, is to make its actions open and accessible. Eliminating the charge on staff time to provide public records sends a strong signal from this body to the State that we believe in the ability of citizens to serve as a check against an intrusive government. Moreover, many local agencies lack the knowledge and skill to produce policies when left on their own to craft them. The attorney for our school district, for instance, made it clear in a response to me regarding our fee, that it was the long standing policy of the district to set the fees in the manner they used. Yet, once we further investigated the claim, we found that the district has completed just six invoices for open records requests in the last twelve years. It is essential, therefore, that the Legislature use its authority to set the tone and policy for open records requests.

My case is illustrative of the problem that ordinary citizens face when they seek access to important information from an agency that lacks experience and interest in helping. My daughter initially was denied placement in the high school of her choice, despite the fact that prior to this year, 100% of placement preferences were granted. As an entering 9th grader, she risked facing the social pressures of high school without the support network of friends she had developed – their preference was granted and they were headed to a different high school. We were shocked at the decision. We immediately wanted to learn how the decision was made, when the policies were changed, by whom, and on what authority. I read the school board policy on open records requests, and I emailed the clerk of the board to initiate our request. As someone who has never made an open records request, my request was a bit broad, but not ridiculous. I have attached my original request for your review. The vast majority of our request was for documents used by the Board and emails by top administrators discussing the policy.

Without an estimate of price, the school district produced the records. They claimed that more than 30 hours were necessary to produce 332 pages. The bill was \$994.49. Dismayed at the price, but eager to see the results, I paid the fee. The district did not provide any specific documentation or hours, just the total price. After reviewing the documents, I contacted the school district's attorney and told him that I was planning on disputing the charges with our local District Attorney. At that time, I had no itemized bill and a lot of emails that were basically

worthless. Within several days I was provided an itemized receipt, which I have attached for your review. Since it took several days to provide, I am left to wonder if the itemized receipt was created after the district settled on an amount they would charge me. Why wasn't it included with the original request or why wasn't it produced immediately?

Allowing the district to charge staff time to produce our documents creates an environment that discourages public access to documents. In our case, we paid the staff time for several administrators who produced no documents. We were billed for 15 (to 30) minutes of their time at their actual hourly rate. And, adding insult to the charges, we paid for printed pages that included no relevant information except for our original KORA request! In other cases, we paid exorbitant hourly rates along with an outrageous number of hours. For example, I was charged \$84 an hour for the 15 minute search done by the Superintendent that yielded no documents. I was charged \$60.39 an hour for the 4 ½ hour search conducted by one principal, and it yielded about 12 emails and a 2-page handwritten document. Contrast that with other administrators who produced nearly 100 pages in less than hour. We paid one district employee for 16 hours worth of time. We were told that she had to review a lot of printed material. But, it is hard to imagine how our request could have required so much work. Assuming a slow pace of reviewing 6 pages per minute (10 seconds per page), the district is alleging she reviewed nearly 6,000 pages of documents to fulfill our request. We requested information pertaining to one policy (enacted in 2008, apparently overturned in 2010, and which caused an uproar in 2013). While our district might have thousands of pages of records, the vast majority would not need to be reviewed for our request. If the request was onerous, the district should have said so. If it wasn't, they should not have required more than 30 hours of personnel time to complete the request. But, allowing the district to set the rate encourages the district to charge outrageous fees for open records requests.

After several weeks of negotiating with the district's attorney, the district agreed to move everyone's fee to \$25 an hour, which refunded me around \$150. However, by moving everyone to a flat fee, it means I paid a secretary who normally gets paid \$13 an hour \$25 an hour to work on my request. It must be noted that what she did was not even within the scope of the law. She did not provide any documents. She merely provided "historical context."

The point should be clear: When fees are high, and localities are given broad discretion to set the fees, people are deterred from using the law the way it was meant to be used. It is no wonder that only six open records requests have been made in twelve years. Our district appears willing to charge us nearly twice the hourly rate for work that doesn't even include producing a single document.

In addition, stripping the fee from the law would encourage the agencies to create efficient procedures for fulfilling KORA requests. After receiving the itemized bill, it became obvious that the district relies on individuals to produce saved emails rather than retrieving information from a central IT source. In our case, the clerk emailed every administrator and asked them to turn over their own emails. Since KORA does not provide rules as to how a request is to be fulfilled, the government fulfilling the request is not even required to use the least restrictive

means necessary. In the case of the Maize school district, having each individual administrator search their own email makes no sense. You are increasing the likelihood that documents will be illegally withheld tenfold by leaving it to the individual. If the Superintendent finds and email that is damaging to his/her reputation, do you think they will turn it over? What if it is damaging to their career? I would argue it is even less likely he/she would turn it over. What if it was illegal? In our case, we asked that every email for the last five years on the district's placement policy for middle school and high school be turned over. That should have yielded thousands of pages of emails. Instead, our Superintendent turned over no emails related to the policy. Let that sink in. No emails from the Superintendent on the established, reversed, and now controversial placement policy. Stripping the fee from the law would encourage localities, like our school district, to confront the question of efficient storage and retrieval of emails. Such a policy will increase the likelihood that all information will be made available, not just the information deemed acceptable to release.

Allowing localities to set their own rates on KORA means they will discourage KORA requests by charging exorbitant fees. That is what happened in my case. Based on some of the documents I read, I would have loved to learned more, but I could not afford another \$1,000 bill. In fact, the lack of oversight in the state law allows local governments to profit from a KORA request. In my case, all of the administrators are salaried employees, so it costs their agency no extra money for them to search their email. Instead, the money I am paying for their services is pure profit.

There is no point to having an open records law that is so easily manipulated by the localities. Leaving KORA open ended, as it is now, invites abuse of discretion. In my case, I chose to settle with the school district rather than take my case to the District Attorney. But, with Senate Bill 10, you have the ability to exercise your authority and send a clear signal to government agencies and the citizens of Kansas: our government works for us and we are entitled to review public documents without paying exorbitant fees. I hope you take the opportunity to make sure that what happened in my case does not happen again. We were motivated to protect our daughter. These are the moments the law was designed for: average citizens who have been negatively affected by a decision from a public agency. We needed to know why. It doesn't mean we will get our way, but we deserve to understand why it happened. It is not right that we live in the greatest democracy the world has known, but we have to pay to learn why the laws are the way they are. Many families across the state could not have paid the bill. But, access to public documents, to scrutinize important decisions, like those directly affecting our families, is a cause worthy of your support.

Thank you for your time and consideration in this matter.

Jan Jarman
1826 N Valleyview
Wichita, KS 67212

On Mon, Jan 28, 2013 at 10:59 AM, Jan Jarman <janjarman@gmail.com> wrote:
Ms. Brown:

I am available to visit the Administration building today to file my Freedom of Information Act request. Is there someone I need to meet with or should I just submit my request by letter? Could this email act as my formal request? At this point, I will be seeking:

- Minutes from school board meetings or any other type of meeting where the feeder system was discussed.
- emails and documents from 2012-2013 between Administrators and/or Board members discussing high school placement procedure and middle school placement procedure. I understand that any email that contains student names would have all private information redacted.
- emails and documents from 2008-2013 discussing the feeder plan system
- number of appeals heard pertaining to 2013/14 high school placement. I am looking only for appeals based on incoming freshman/not transfers.
- number of placement appeals granted pertaining to 2013/14 high school placement..for incoming 9th graders/not transfers
- number of people who requested preference for each school..with separate totals for each school
- number of students in each class in both high schools and both middle schools for last 5 years
- number of Maize Middle School students assigned to 9th grade at Maize South for the 2013/14 school year
- number of incoming freshman allowed into each high school 2013/2014..with separate totals per school

My understanding is that after I submit my formal request, you will have three days to respond. Please consider this email a formal request. However, if I you prefer, I can come by the office and personally deliver a letter.

Thank you.
Jan Jarman

Admin		P Hr	Time	Total
Marsha	Beard	56.77	0.25	14.1925
Shelia	Rathbun	50.28	0.5	25.14
Julie	Cannizzo	48.47	0.5	24.235
Steve	Williams	53.75	0.25	13.4375
Gillian	Gaskill	43.37	0.25	10.8425
Jess	Herbig	50.35	0.5	25.175
Doug	Powers	84.14	0.25	21.035
Craig	Broadbent	47.19	0.5	23.595
Chris	Botts	60.39	4.5	271.755
Karen	McDermot	41.09	0.75	30.8175
Robin	Brown	25.47	16	407.52
Kristi	Latimer	17.9	0.25	4.475
Angie	Mosate	13.1	6	78.6
				0
				0
				0
Copies		332	0.25	83

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