

{As Amended by Senate Committee of the Whole}

As Amended by Senate Committee

As Amended by House Committee

Session of 2013

HOUSE BILL No. 2128

By Representative Sloan

1-29

1 AN ACT concerning the open records act, exceptions; amending K.S.A.
2 2012 Supp. 45-221 and repealing the existing section; also repealing
3 K.S.A. 2012 Supp. 45-221j and 45-221k.
4

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

6 Section 1. K.S.A. 2012 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 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. 2012 Supp. 75-
13 4315d, and amendments thereto, or the disclosure of which is prohibited or
14 restricted pursuant to specific authorization of federal law, state statute or
15 rule of the Kansas supreme court or rule of the senate committee on
16 confirmation oversight relating to information submitted to the committee
17 pursuant to K.S.A. 2012 Supp. 75-4315d, and amendments thereto, to
18 restrict or prohibit disclosure.

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

21 (3) Medical, psychiatric, psychological or alcoholism or drug
22 dependency treatment records which 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 would reveal the identity of any undercover
30 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

1 the appointment of persons to fill a vacancy in an elected office.

2 (7) Library, archive and museum materials contributed by private
3 persons, to the extent of any limitations imposed as conditions of the
4 contribution.

5 (8) Information which would reveal the identity of an individual who
6 lawfully makes a donation to a public agency, if anonymity of the donor is
7 a condition of the donation, except if the donation is intended for or
8 restricted to providing remuneration or personal tangible benefit to a
9 named public officer or employee.

10 (9) Testing and examination materials, before the test or examination
11 is given or if it is to be given again, or records of individual test or
12 examination scores, other than records which show only passage or failure
13 and not specific scores.

14 (10) Criminal investigation records, except as provided herein. The
15 district court, in an action brought pursuant to K.S.A. 45-222, and
16 amendments thereto, may order disclosure of such records, subject to such
17 conditions as the court may impose, if the court finds that disclosure:

18 (A) Is in the public interest;

19 (B) would not interfere with any prospective law enforcement action,
20 criminal investigation or prosecution;

21 (C) would not reveal the identity of any confidential source or
22 undercover agent;

23 (D) would not reveal confidential investigative techniques or
24 procedures not known to the general public;

25 (E) would not endanger the life or physical safety of any person; and

26 (F) would not reveal the name, address, phone number or any other
27 information which specifically and individually identifies the victim of any
28 sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated,
29 prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes
30 Annotated, and amendments thereto.

31 If a public record is discretionarily closed by a public agency pursuant
32 to this subsection, the record custodian, upon request, shall provide a
33 written citation to the specific provisions of paragraphs (A) through (F)
34 that necessitate closure of that public record.

35 (11) Records of agencies involved in administrative adjudication or
36 civil litigation, compiled in the process of detecting or investigating
37 violations of civil law or administrative rules and regulations, if disclosure
38 would interfere with a prospective administrative adjudication or civil
39 litigation or reveal the identity of a confidential source or undercover
40 agent.

41 (12) Records of emergency or security information or procedures of a
42 public agency, or plans, drawings, specifications or related information for
43 any building or facility which is used for purposes requiring security

1 measures in or around the building or facility or which is used for the
2 generation or transmission of power, water, fuels or communications, if
3 disclosure would jeopardize security of the public agency, building or
4 facility.

5 (13) The contents of appraisals or engineering or feasibility estimates
6 or evaluations made by or for a public agency relative to the acquisition-~~or~~
7 *disposal* of property, prior to the award of formal contracts therefor.

8 (14) Correspondence between a public agency and a private
9 individual, other than correspondence which is intended to give notice of
10 an action, policy or determination relating to any regulatory, supervisory or
11 enforcement responsibility of the public agency or which is widely
12 distributed to the public by a public agency and is not specifically in
13 response to communications from such a private individual.

14 (15) Records pertaining to employer-employee negotiations, if
15 disclosure would reveal information discussed in a lawful executive
16 session under K.S.A. 75-4319, and amendments thereto.

17 (16) Software programs for electronic data processing and
18 documentation thereof, but each public agency shall maintain a register,
19 open to the public, that describes:

20 (A) The information which the agency maintains on computer
21 facilities; and

22 (B) the form in which the information can be made available using
23 existing computer programs.

24 (17) Applications, financial statements and other information
25 submitted in connection with applications for student financial assistance
26 where financial need is a consideration for the award.

27 (18) Plans, designs, drawings or specifications which are prepared by
28 a person other than an employee of a public agency or records which are
29 the property of a private person.

30 (19) Well samples, logs or surveys which the state corporation
31 commission requires to be filed by persons who have drilled or caused to
32 be drilled, or are drilling or causing to be drilled, holes for the purpose of
33 discovery or production of oil or gas, to the extent that disclosure is
34 limited by rules and regulations of the state corporation commission.

35 (20) Notes, preliminary drafts, research data in the process of
36 analysis, unfunded grant proposals, memoranda, recommendations or
37 other records in which opinions are expressed or policies or actions are
38 proposed, except that this exemption shall not apply when such records are
39 publicly cited or identified in an open meeting or in an agenda of an open
40 meeting.

41 (21) Records of a public agency having legislative powers, which
42 records pertain to proposed legislation or amendments to proposed
43 legislation, except that this exemption shall not apply when such records

1 are:

2 (A) Publicly cited or identified in an open meeting or in an agenda of
3 an open meeting; or

4 (B) distributed to a majority of a quorum of any body which has
5 authority to take action or make recommendations to the public agency
6 with regard to the matters to which such records pertain.

7 (22) Records of a public agency having legislative powers, which
8 records pertain to research prepared for one or more members of such
9 agency, except that this exemption shall not apply when such records are:

10 (A) Publicly cited or identified in an open meeting or in an agenda of
11 an open meeting; or

12 (B) distributed to a majority of a quorum of any body which has
13 authority to take action or make recommendations to the public agency
14 with regard to the matters to which such records pertain.

15 (23) Library patron and circulation records which pertain to
16 identifiable individuals.

17 (24) Records which are compiled for census or research purposes and
18 which pertain to identifiable individuals.

19 (25) Records which represent and constitute the work product of an
20 attorney.

21 (26) Records of a utility or other public service pertaining to
22 individually identifiable residential customers of the utility or service,
23 ~~except that usage and cost information concerning billings for specific~~
24 ~~individual customers named addresses identified by the requester shall be~~
25 ~~subject to disclosure as provided by this act.~~

26 (27) Specifications for competitive bidding, until the specifications
27 are officially approved by the public agency.

28 (28) Sealed bids and related documents, until a bid is accepted or all
29 bids rejected.

30 (29) Correctional records pertaining to an identifiable inmate or
31 release, except that:

32 (A) The name; photograph and other identifying information;
33 sentence data; parole eligibility date; custody or supervision level;
34 disciplinary record; supervision violations; conditions of supervision,
35 excluding requirements pertaining to mental health or substance abuse
36 counseling; location of facility where incarcerated or location of parole
37 office maintaining supervision and address of a releasee whose crime was
38 committed after the effective date of this act shall be subject to disclosure
39 to any person other than another inmate or releasee, except that the
40 disclosure of the location of an inmate transferred to another state pursuant
41 to the interstate corrections compact shall be at the discretion of the
42 secretary of corrections;

43 (B) ~~the ombudsman of corrections~~; the attorney general, law

1 enforcement agencies, counsel for the inmate to whom the record pertains
2 and any county or district attorney shall have access to correctional records
3 to the extent otherwise permitted by law;

4 (C) the information provided to the law enforcement agency pursuant
5 to the sex offender registration act, K.S.A. 22-4901 et seq., and
6 amendments thereto, shall be subject to disclosure to any person, except
7 that the name, address, telephone number or any other information which
8 specifically and individually identifies the victim of any offender required
9 to register as provided by the Kansas offender registration act, K.S.A. 22-
10 4901 et seq., and amendments thereto, shall not be disclosed; and

11 (D) records of the department of corrections regarding the financial
12 assets of an offender in the custody of the secretary of corrections shall be
13 subject to disclosure to the victim, or such victim's family, of the crime for
14 which the inmate is in custody as set forth in an order of restitution by the
15 sentencing court.

16 (30) Public records containing information of a personal nature where
17 the public disclosure thereof would constitute a clearly unwarranted
18 invasion of personal privacy.

19 (31) Public records pertaining to prospective location of a business or
20 industry where no previous public disclosure has been made of the
21 business' or industry's interest in locating in, relocating within or
22 expanding within the state. This exception shall not include those records
23 pertaining to application of agencies for permits or licenses necessary to
24 do business or to expand business operations within this state, except as
25 otherwise provided by law.

26 (32) Engineering and architectural estimates made by or for any
27 public agency relative to public improvements.

28 (33) Financial information submitted by contractors in qualification
29 statements to any public agency.

30 (34) Records involved in the obtaining and processing of intellectual
31 property rights that are expected to be, wholly or partially vested in or
32 owned by a state educational institution, as defined in K.S.A. 76-711, and
33 amendments thereto, or an assignee of the institution organized and
34 existing for the benefit of the institution.

35 (35) Any report or record which is made pursuant to K.S.A. 65-4922,
36 65-4923 or 65-4924, and amendments thereto, and which is privileged
37 pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

38 (36) Information which would reveal the precise location of an
39 archeological site.

40 (37) Any financial data or traffic information from a railroad
41 company, to a public agency, concerning the sale, lease or rehabilitation of
42 the railroad's property in Kansas.

43 (38) Risk-based capital reports, risk-based capital plans and

1 corrective orders including the working papers and the results of any
2 analysis filed with the commissioner of insurance in accordance with
3 K.S.A. 40-2c20 and 40-2d20, and amendments thereto.

4 (39) Memoranda and related materials required to be used to support
5 the annual actuarial opinions submitted pursuant to subsection (b) of
6 K.S.A. 40-409, and amendments thereto.

7 (40) Disclosure reports filed with the commissioner of insurance
8 under subsection (a) of K.S.A. 40-2,156, and amendments thereto.

9 (41) All financial analysis ratios and examination synopses
10 concerning insurance companies that are submitted to the commissioner by
11 the national association of insurance commissioners' insurance regulatory
12 information system.

13 (42) Any records the disclosure of which is restricted or prohibited by
14 a tribal-state gaming compact.

15 (43) Market research, market plans, business plans and the terms and
16 conditions of managed care or other third-party contracts, developed or
17 entered into by the university of Kansas medical center in the operation
18 and management of the university hospital which the chancellor of the
19 university of Kansas or the chancellor's designee determines would give an
20 unfair advantage to competitors of the university of Kansas medical center.

21 (44) The amount of franchise tax paid to the secretary of revenue or
22 the secretary of state by domestic corporations, foreign corporations,
23 domestic limited liability companies, foreign limited liability companies,
24 domestic limited partnership, foreign limited partnership, domestic limited
25 liability partnerships and foreign limited liability partnerships.

26 (45) Records, other than criminal investigation records, the disclosure
27 of which would pose a substantial likelihood of revealing security
28 measures that protect: (A) Systems, facilities or equipment used in the
29 production, transmission or distribution of energy, water or
30 communications services; (B) transportation and sewer or wastewater
31 treatment systems, facilities or equipment; or (C) private property or
32 persons, if the records are submitted to the agency. For purposes of this
33 paragraph, security means measures that protect against criminal acts
34 intended to intimidate or coerce the civilian population, influence
35 government policy by intimidation or coercion or to affect the operation of
36 government by disruption of public services, mass destruction,
37 assassination or kidnapping. Security measures include, but are not limited
38 to, intelligence information, tactical plans, resource deployment and
39 vulnerability assessments.

40 (46) Any information or material received by the register of deeds of
41 a county from military discharge papers, DD Form 214. Such papers shall
42 be disclosed: To the military dischargee; to such dischargee's immediate
43 family members and lineal descendants; to such dischargee's heirs, agents

1 or assigns; to the licensed funeral director who has custody of the body of
2 the deceased dischargee; when required by a department or agency of the
3 federal or state government or a political subdivision thereof; when the
4 form is required to perfect the claim of military service or honorable
5 discharge or a claim of a dependent of the dischargee; and upon the written
6 approval of the commissioner of veterans affairs, to a person conducting
7 research.

8 (47) Information that would reveal the location of a shelter or a
9 safehouse or similar place where persons are provided protection from
10 abuse or the name, address, location or other contact information of
11 alleged victims of stalking, domestic violence or sexual assault.

12 (48) Policy information provided by an insurance carrier in
13 accordance with subsection (h)(1) of K.S.A. 44-532, and amendments
14 thereto. This exemption shall not be construed to preclude access to an
15 individual employer's record for the purpose of verification of insurance
16 coverage or to the department of labor for their business purposes.

17 (49) An individual's e-mail address, cell phone number and other
18 contact information which has been given to the public agency for the
19 purpose of public agency notifications or communications which are
20 widely distributed to the public.

21 (50) Information provided by providers to the local collection point
22 administrator or to the 911 coordinating council pursuant to the Kansas
23 911 act, and amendments thereto, upon request of the party submitting
24 such records.

25 (51) Records of a public agency which identify the home address or
26 home ownership of a law enforcement officer as defined in K.S.A. 2012
27 Supp. 21-5111, and amendments thereto, parole officer, probation officer,
28 court services officer or community correctional services officer. The
29 agency head of such law enforcement office, parole office, probation
30 office, court services office or community correctional services office or
31 such individual officer shall file with the custodian of such record a
32 request to have such officer's identifying information removed from public
33 access. Within seven days of receipt of such requests, the public agency
34 shall remove such officer's identifying information from such public
35 access.

36 (52) Records of a public agency which identify the home address or
37 home ownership of a federal judge, a justice of the supreme court, a judge
38 of the court of appeals, a district judge, a district magistrate judge, the
39 United States attorney for the district of Kansas, an assistant United States
40 attorney, the attorney general, an assistant attorney general, a district
41 attorney or county attorney or an assistant district attorney or assistant
42 county attorney. Such person or such person's employer shall file with the
43 custodian of such record a request to have such person's identifying

1 information removed from public access. Within seven days of receipt of
2 such requests, the public agency shall remove such person's identifying
3 information from such public access.

4 (53) *Records of a utility concerning information about cyber security*
5 *threats, attacks or general attempts to attack utility operations provided to*
6 *law enforcement agencies, the state corporation commission, the federal*
7 *energy regulatory commission, the department of energy, the southwest*
8 *power pool, the North American electric reliability corporation, the*
9 *federal communications commission or any other federal, state or*
10 *regional organization that has a responsibility for the safeguarding of*
11 *telecommunications, electric, **potable water, waste water disposal {or***
12 ***treatment}, motor fuel or natural gas energy supply systems.***

13 (b) Except to the extent disclosure is otherwise required by law or as
14 appropriate during the course of an administrative proceeding or on appeal
15 from agency action, a public agency or officer shall not disclose financial
16 information of a taxpayer which may be required or requested by a county
17 appraiser or the director of property valuation to assist in the determination
18 of the value of the taxpayer's property for ad valorem taxation purposes; or
19 any financial information of a personal nature required or requested by a
20 public agency or officer, including a name, job description or title
21 revealing the salary or other compensation of officers, employees or
22 applicants for employment with a firm, corporation or agency, except a
23 public agency. Nothing contained herein shall be construed to prohibit the
24 publication of statistics, so classified as to prevent identification of
25 particular reports or returns and the items thereof.

26 (c) As used in this section, the term "cited or identified" shall not
27 include a request to an employee of a public agency that a document be
28 prepared.

29 (d) If a public record contains material which is not subject to
30 disclosure pursuant to this act, the public agency shall separate or delete
31 such material and make available to the requester that material in the
32 public record which is subject to disclosure pursuant to this act. If a public
33 record is not subject to disclosure because it pertains to an identifiable
34 individual, the public agency shall delete the identifying portions of the
35 record and make available to the requester any remaining portions which
36 are subject to disclosure pursuant to this act, unless the request is for a
37 record pertaining to a specific individual or to such a limited group of
38 individuals that the individuals' identities are reasonably ascertainable, the
39 public agency shall not be required to disclose those portions of the record
40 which pertain to such individual or individuals.

41 (e) The provisions of this section shall not be construed to exempt
42 from public disclosure statistical information not descriptive of any
43 identifiable person.

1 (f) Notwithstanding the provisions of subsection (a), any public
2 record which has been in existence more than 70 years shall be open for
3 inspection by any person unless disclosure of the record is specifically
4 prohibited or restricted by federal law, state statute or rule of the Kansas
5 supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and
6 amendments thereto.

7 (g) Any confidential records or information relating to security
8 measures provided or received under the provisions of subsection (a)(45)
9 shall not be subject to subpoena, discovery or other demand in any
10 administrative, criminal or civil action.

11 Sec. 2. K.S.A. 2012 Supp. 45-221, 45-221j and 45-221k are hereby
12 repealed.

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