

As Amended by House Committee

As Amended by Senate Committee

Session of 2015

SENATE BILL No. 206

By Committee on Federal and State Affairs

2-11

1 AN ACT concerning public agencies; relating to the state of Kansas and
2 local units of government; providing certain powers to the attorney
3 general for investigation of violations of the open records act and the
4 open meetings act; open government fund; amending K.S.A. 45-223,
5 45-228 and 75-4320a and K.S.A. 2014 Supp. **45-221**, 45-222, 75-4320
6 and 75-4320b and repealing the existing sections.
7

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

9 New Section 1. (a) The attorney general may determine by a
10 preponderance of the evidence after an investigation that a public agency
11 has violated K.S.A. 45-215 et seq., and amendments thereto, and may, at
12 any time prior to the filing of an action pursuant to K.S.A. 45-222, and
13 amendments thereto, either enter into a consent order with the public
14 agency or issue a finding of violation to the public agency.

15 (1) If the attorney general enters into a consent order with the public
16 agency, the consent order:

17 (A) May contain admissions of fact and any or all of the following:

18 (i) Require completion of training approved by the attorney general
19 concerning the requirements of K.S.A. 45-215 et seq., and amendments
20 thereto;

21 (ii) impose a civil penalty as provided for in K.S.A. 45-223, and
22 amendments thereto, in an amount not to exceed \$250 for each violation;
23 and

24 (iii) set forth the public agency's agreement that it will comply with
25 the requirements of the open records act, K.S.A. 45-215 et seq., and
26 amendments thereto; and

27 (B) shall bear the signature of the head of the public agency, of any
28 officer found to have violated the provisions of K.S.A. 45-215 et seq., and
29 amendments thereto, and of any other person required by the attorney
30 general. If the public agency is a governing body, all of the members of the
31 governing body shall sign the consent order.

32 (2) If the attorney general issues a finding of violation to the public
33 agency, the finding may contain findings of fact and conclusions of law
34 and require the public agency to do any or all of the following:

- 1 (A) Cease and desist from further violation;
- 2 (B) comply with the provisions of K.S.A. 45-215 et seq., and
3 amendments thereto;
- 4 (C) complete training approved by the attorney general concerning
5 the requirements of K.S.A. 45-215 et seq., and amendments thereto; and
- 6 (D) pay a civil penalty as provided for in K.S.A. 45-223, and
7 amendments thereto, in an amount not to exceed \$500 for each violation.
- 8 (b) The attorney general may require submission of proof that
9 requirements of any consent order entered pursuant to subsection (a)(1) or
10 any finding of violation issued pursuant to subsection (a)(2) have been
11 satisfied.
- 12 (c) (1) The attorney general may apply to the district court to enforce
13 a consent order pursuant to subsection (a)(1) or finding of violation
14 pursuant to subsection (a)(2). Prior to applying to the district court, the
15 attorney general shall make a demand to the public agency to comply with
16 the consent order or finding of violation and afford reasonable opportunity
17 for the public agency to cure the violation.
- 18 (2) An enforcement action under this section may be filed in the
19 district court of the county where the consent order or finding of violation
20 is issued or is effective. The district court of any county shall have
21 jurisdiction to enforce any consent order or finding of violation.
- 22 (3) In any enforcement action under this section, the court on its own
23 motion, or on the motion of either party, may view the records in
24 controversy in camera before reaching a decision.
- 25 (4) If the district court finds the attorney general did not abuse the
26 attorney general's discretion in entering into the consent order or issuing
27 the finding of violation, the district court shall enter an order that:
- 28 (A) Enjoins the public agency to comply with the consent order or
29 finding of violation;
- 30 (B) imposes a civil penalty as provided for in K.S.A. 45-223, and
31 amendments thereto. The penalty shall be set by the court in an amount not
32 less than the amount ordered by the attorney general, nor more than \$500
33 for each violation;
- 34 (C) requires the public agency to pay the attorney general's
35 ~~reasonable costs in investigating and bringing an action to enforce the~~
36 ~~order, including reasonable attorney fees~~ **court costs and costs incurred**
37 **in investigating the violation;** and
- 38 (D) provides for any other remedy authorized by K.S.A. 45-222(a),
39 and amendments thereto, that the court deems appropriate.
- 40 **(5) In any enforcement action under this section, if the court finds**
41 **that any of the provisions of K.S.A. 45-215 et seq., and amendments**
42 **thereto, were violated, such court:**
- 43 (A) Except as provided in subsection (c)(5)(B), may require the

1 **public agency to pay the attorney general's reasonable attorney fees;**
2 **and**

3 **(B) shall require the public agency to pay the attorney general's**
4 **reasonable attorney fees, if the public agency's violation was not made**
5 **in good faith and without a reasonable basis in fact or law.**

6 (d) Any finding of violation issued by the attorney general pursuant
7 to subsection (a)(2) shall be served upon the public agency:

8 (1) By certified mail, return receipt requested, to the last known place
9 of business, residence or abode within or without this state; or

10 (2) in the manner provided in the code of civil procedure as if a
11 petition had been filed.

12 (e) The attorney general shall maintain and make available for public
13 inspection all consent orders entered pursuant to subsection (a)(1) and all
14 findings of violation issued pursuant to subsection (a)(2).

15 (f) This section shall be a part of and supplemental to the open
16 records act.

17 New Sec. 2. (a) In lieu of bringing an action as provided in K.S.A.
18 45-222, and amendments thereto, the attorney general or a county or
19 district attorney may resolve the matter by accepting a consent judgment
20 with respect to any act or practice declared to be a violation of this act.
21 Before any consent judgment entered into pursuant to this section shall be
22 effective, such judgment must be approved by the district court and an
23 entry made thereof in the manner required for making an entry of
24 judgment. Once such approval is received, any breach of the conditions of
25 the consent judgment shall be treated as a violation of a court order, and
26 shall be subject to all the penalties provided by law therefor.

27 (b) A consent judgment may contain any remedy available to the
28 district court, except it shall not include an award of reasonable expenses,
29 investigation costs or attorney fees. A consent judgment may include a
30 stipulation concerning the production of records requested pursuant to
31 K.S.A. 45-215 et seq., and amendments thereto, subject to any permissible
32 redactions as described in the consent judgment.

33 (c) This section shall be a part of and supplemental to the open
34 records act.

35 New Sec. 3. (a) Any complaint submitted to the attorney general shall
36 be on a form prescribed by the attorney general setting forth the facts that
37 the complaining party believes show that K.S.A. 45-215 et seq., and
38 amendments thereto, have been violated. The person submitting the
39 complaint must attest to the facts under penalty of perjury pursuant to
40 K.S.A. 53-601, and amendments thereto.

41 (b) This section shall be a part of and supplemental to the open
42 records act.

43 New Sec. 4. (a) The attorney general may determine by a

1 preponderance of the evidence after an investigation that a public **body or**
2 agency has violated K.S.A. 75-4317 et seq., and amendments thereto, and
3 may, at any time prior to the filing of an action pursuant to K.S.A. 75-
4 4320a, and amendments thereto, either enter into a consent order with the
5 public **body or** agency or issue a finding of violation to the public **body or**
6 agency.

7 (1) If the attorney general enters into a consent order with the public
8 **body or** agency, the consent order:

9 (A) May contain admissions of fact and any or all of the following:

10 (i) Require completion of training approved by the attorney general
11 concerning the requirements of K.S.A. 75-4317 et seq., and amendments
12 thereto;

13 (ii) impose a civil penalty as provided for in K.S.A. 75-4320, and
14 amendments thereto, in an amount not to exceed \$250 for each violation;
15 and

16 (iii) set forth the public **body or** agency's agreement that it will
17 comply with the requirements of the open meetings act, K.S.A. 75-4317 et
18 seq., and amendments thereto; and

19 (B) shall bear the signature of the head of the public **body or** agency,
20 of any officer found to have violated the provisions of K.S.A. 75-4317 et
21 seq., and amendments thereto, and of any other person required by the
22 attorney general. ~~If the public agency is a governing body, all of the~~
23 ~~members of the governing body shall sign the consent order.~~

24 (2) If the attorney general issues a finding of violation to the public
25 **body or** agency, the finding may contain findings of fact and conclusions
26 of law and require the public **body or** agency to do any or all of the
27 following:

28 (A) Cease and desist from further violation;

29 (B) comply with the provisions of K.S.A. 75-4317 et seq., and
30 amendments thereto;

31 (C) complete training approved by the attorney general concerning
32 the requirements of K.S.A. 75-4317 et seq., and amendments thereto; and

33 (D) pay a civil penalty as provided for in K.S.A. 75-4320, and
34 amendments thereto, in an amount not to exceed \$500 for each violation.

35 (b) The attorney general may require submission of proof that
36 requirements of any consent order entered pursuant to subsection (a)(1) or
37 any finding of violation issued pursuant to subsection (a)(2) have been
38 satisfied.

39 (c) (1) The attorney general may apply to the district court to enforce
40 a consent order pursuant to subsection (a)(1) or finding of violation
41 pursuant to subsection (a)(2). Prior to applying to the district court, the
42 attorney general shall make a demand to the public **body or** agency to
43 comply with the consent order or finding of violation and afford

1 reasonable opportunity for the public **body or** agency to cure the violation.

2 (2) An enforcement action under this section may be filed in the
3 district court of the county where the consent order or finding of violation
4 is issued or is effective. The district court of any county shall have
5 jurisdiction to enforce any consent order or finding of violation.

6 (3) If the district court finds the attorney general did not abuse the
7 attorney general's discretion in entering into the consent order or issuing
8 the finding of violation, the district court shall enter an order that:

9 (A) Enjoins the public **body or** agency to comply with the consent
10 order or finding of violation;

11 (B) imposes a civil penalty as provided for in K.S.A. 75-4320, and
12 amendments thereto. The penalty shall be set by the court in an amount not
13 less than the amount ordered by the attorney general, nor more than \$500
14 for each violation;

15 (C) requires the public **body or** agency to pay the attorney general's
16 ~~reasonable costs in investigating and bringing an action to enforce the~~
17 ~~order, including reasonable attorney fees~~ **court costs and costs incurred**
18 **in investigating the violation;** and

19 (D) provides for any other remedy authorized by K.S.A. 75-4320a(a),
20 and amendments thereto, that the court deems appropriate.

21 **(4) In any enforcement action under this section, if the court finds**
22 **that any of the provisions of K.S.A. 75-4317 et seq., and amendments**
23 **thereto, were violated, such court:**

24 **(A) Except as provided in subsection (c)(4)(B), may require the**
25 **public body or agency to pay the attorney general's reasonable**
26 **attorney fees; and**

27 **(B) shall require the public body or agency to pay the attorney**
28 **general's reasonable attorney fees, if the public body or agency's**
29 **violation was not made in good faith and without a reasonable basis in**
30 **fact or law.**

31 (d) Any finding of violation issued by the attorney general pursuant
32 to subsection (a)(2) shall be served upon the public **body or** agency:

33 (1) By certified mail, return receipt requested, to the last known place
34 of business, residence or abode within or without this state; or

35 (2) in the manner provided in the code of civil procedure as if a
36 petition had been filed.

37 (e) The attorney general shall maintain and make available for public
38 inspection all consent orders entered pursuant to subsection (a)(1) and all
39 findings of violation issued pursuant to subsection (a)(2).

40 (f) This section shall be a part of and supplemental to the open
41 meetings act.

42 New Sec. 5. (a) In lieu of bringing an action as provided in K.S.A.
43 75-4320a, and amendments thereto, the attorney general or a county or

1 district attorney may resolve the matter by accepting a consent judgment
2 with respect to any act or practice declared to be a violation of this act.
3 Before any consent judgment entered into pursuant to this section shall be
4 effective, such judgment must be approved by the district court and an
5 entry made thereof in the manner required for making an entry of
6 judgment. Once such approval is received, any breach of the conditions of
7 the consent judgment shall be treated as a violation of a court order, and
8 shall be subject to all the penalties provided by law therefor.

9 (b) A consent judgment may contain any remedy available to the
10 district court, except it shall not include an award of reasonable expenses,
11 investigation costs or attorney fees.

12 (c) This section shall be a part of and supplemental to the open
13 meetings act.

14 New Sec. 6. (a) Any complaint submitted to the attorney general shall
15 be on a form prescribed by the attorney general setting forth the facts that
16 the complaining party believes show that K.S.A. 75-4317 et seq., and
17 amendments thereto, have been violated. The person submitting the
18 complaint must attest to the facts under penalty of perjury pursuant to
19 K.S.A. 53-601, and amendments thereto.

20 (b) This section shall be a part of and supplemental to the open
21 meetings act.

22 New Sec. 7. (a) There is hereby created in the state treasury the
23 attorney general's open government fund. Moneys in the attorney general's
24 open government fund shall be used by the attorney general to carry out
25 the provisions and purposes of the open records act, K.S.A. 45-215 et seq.,
26 and amendments thereto, and the open meetings act, K.S.A. 75-4317 et
27 seq., and amendments thereto. All expenditures from the attorney general's
28 open government fund shall be made in accordance with appropriation acts
29 upon warrants of the director of accounts and reports issued pursuant to
30 vouchers approved by the attorney general or a person designated by the
31 attorney general.

32 (b) All civil penalties, expenses, costs and attorney fees awarded in
33 an action brought by the attorney general pursuant to the open records act,
34 K.S.A. 45-215 et seq., and amendments thereto, or the open meetings act,
35 K.S.A. 75-4317 et seq., and amendments thereto, or pursuant to a consent
36 order or finding of violation of the attorney general as provided in section
37 1 or section 4, and amendments thereto, shall be credited to the attorney
38 general's open government fund.

39 New Sec. 8. (a) Subject to the availability of appropriations, the
40 attorney general shall provide and coordinate training throughout the state
41 to promote knowledge of, and compliance with, the open records act,
42 K.S.A. 45-215 et seq., and amendments thereto, and the open meetings act,
43 K.S.A. 75-4317 et seq., and amendments thereto. The attorney general

1 may consult and coordinate with any appropriate organization to provide
2 training.

3 (b) The attorney general may establish a program of computerized
4 training to promote knowledge of, and compliance with, the open records
5 act, K.S.A. 45-215 et seq., and amendments thereto, and the open meetings
6 act, K.S.A. 75-4317, and amendments thereto, and to make training
7 available throughout the state.

8 (c) The attorney general may approve training programs that satisfy
9 training requirements imposed by the district court or by any order or
10 judgment pursuant to the open records act, K.S.A. 45-215 et seq., and
11 amendments thereto, and the open meetings act, K.S.A. 75-4317 et seq.,
12 and amendments thereto.

13 New Sec. 9. The attorney general may adopt rules and regulations to
14 implement and administer the provisions of the open records act, K.S.A.
15 45-215 et seq., and amendments thereto, and the open meetings act, K.S.A.
16 75-4317 et seq., and amendments thereto.

17 **Sec. 10. K.S.A. 2014 Supp. 45-221 is hereby amended to read as**
18 **follows: 45-221. (a) Except to the extent disclosure is otherwise**
19 **required by law, a public agency shall not be required to disclose:**

20 (1) **Records the disclosure of which is specifically prohibited or**
21 **restricted by federal law, state statute or rule of the Kansas supreme**
22 **court or rule of the senate committee on confirmation oversight**
23 **relating to information submitted to the committee pursuant to K.S.A.**
24 **2014 Supp. 75-4315d, and amendments thereto, or the disclosure of**
25 **which is prohibited or restricted pursuant to specific authorization of**
26 **federal law, state statute or rule of the Kansas supreme court or rule**
27 **of the senate committee on confirmation oversight relating to**
28 **information submitted to the committee pursuant to K.S.A. 2014**
29 **Supp. 75-4315d, and amendments thereto, to restrict or prohibit**
30 **disclosure.**

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

33 (3) **Medical, psychiatric, psychological or alcoholism or drug**
34 **dependency treatment records which pertain to identifiable patients.**

35 (4) **Personnel records, performance ratings or individually**
36 **identifiable records pertaining to employees or applicants for**
37 **employment, except that this exemption shall not apply to the names,**
38 **positions, salaries or actual compensation employment contracts or**
39 **employment-related contracts or agreements and lengths of service of**
40 **officers and employees of public agencies once they are employed as**
41 **such.**

42 (5) **Information which would reveal the identity of any**
43 **undercover agent or any informant reporting a specific violation of**

1 law.

2 (6) Letters of reference or recommendation pertaining to the
3 character or qualifications of an identifiable individual, except
4 documents relating to the appointment of persons to fill a vacancy in
5 an elected office.

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

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

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

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

23 (A) Is in the public interest;

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

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

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

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

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

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

41 (11) Records of agencies involved in administrative adjudication
42 or civil litigation, compiled in the process of detecting or investigating
43 violations of civil law or administrative rules and regulations, if

1 disclosure would interfere with a prospective administrative
2 adjudication or civil litigation or reveal the identity of a confidential
3 source or undercover agent.

4 (12) Records of emergency or security information or procedures
5 of a public agency, or plans, drawings, specifications or related
6 information for any building or facility which is used for purposes
7 requiring security measures in or around the building or facility or
8 which is used for the generation or transmission of power, water, fuels
9 or communications, if disclosure would jeopardize security of the
10 public agency, building or facility.

11 (13) The contents of appraisals or engineering or feasibility
12 estimates or evaluations made by or for a public agency relative to the
13 acquisition of property, prior to the award of formal contracts
14 therefor.

15 (14) Correspondence between a public agency and a private
16 individual, other than correspondence which is intended to give notice
17 of an action, policy or determination relating to any regulatory,
18 supervisory or enforcement responsibility of the public agency or
19 which is widely distributed to the public by a public agency and is not
20 specifically in response to communications from such a private
21 individual.

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

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

28 (A) The information which the agency maintains on computer
29 facilities; and

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

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

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

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

1 **(20) Notes, preliminary drafts, research data in the process of**
2 **analysis, unfunded grant proposals, memoranda, recommendations or**
3 **other records in which opinions are expressed or policies or actions**
4 **are proposed, except that this exemption shall not apply when such**
5 **records are publicly cited or identified in an open meeting or in an**
6 **agenda of an open meeting.**

7 **(21) Records of a public agency having legislative powers, which**
8 **records pertain to proposed legislation or amendments to proposed**
9 **legislation, except that this exemption shall not apply when such**
10 **records are:**

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

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

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

20 **(A) Publicly cited or identified in an open meeting or in an**
21 **agenda of an open meeting; or**

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

25 **(23) Library patron and circulation records which pertain to**
26 **identifiable individuals.**

27 **(24) Records which are compiled for census or research purposes**
28 **and which pertain to identifiable individuals.**

29 **(25) Records which represent and constitute the work product of**
30 **an attorney.**

31 **(26) Records of a utility or other public service pertaining to**
32 **individually identifiable residential customers of the utility or service.**

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

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

37 **(29) Correctional records pertaining to an identifiable inmate or**
38 **release, except that:**

39 **(A) The name; photograph and other identifying information;**
40 **sentence data; parole eligibility date; custody or supervision level;**
41 **disciplinary record; supervision violations; conditions of supervision,**
42 **excluding requirements pertaining to mental health or substance**
43 **abuse counseling; location of facility where incarcerated or location of**

1 parole office maintaining supervision and address of a releasee whose
2 crime was committed after the effective date of this act shall be subject
3 to disclosure to any person other than another inmate or releasee,
4 except that the disclosure of the location of an inmate transferred to
5 another state pursuant to the interstate corrections compact shall be
6 at the discretion of the secretary of corrections;

7 (B) the attorney general, law enforcement agencies, counsel for
8 the inmate to whom the record pertains and any county or district
9 attorney shall have access to correctional records to the extent
10 otherwise permitted by law;

11 (C) the information provided to the law enforcement agency
12 pursuant to the sex offender registration act, K.S.A. 22-4901 et seq.,
13 and amendments thereto, shall be subject to disclosure to any person,
14 except that the name, address, telephone number or any other
15 information which specifically and individually identifies the victim of
16 any offender required to register as provided by the Kansas offender
17 registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall
18 not be disclosed; and

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

24 (30) Public records containing information of a personal nature
25 where the public disclosure thereof would constitute a clearly
26 unwarranted invasion of personal privacy.

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

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

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

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

43 (35) Any report or record which is made pursuant to K.S.A. 65-

1 4922, 65-4923 or 65-4924, and amendments thereto, and which is
2 privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments
3 thereto.

4 (36) Information which would reveal the precise location of an
5 archeological site.

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

9 (38) Risk-based capital reports, risk-based capital plans and
10 corrective orders including the working papers and the results of any
11 analysis filed with the commissioner of insurance in accordance with
12 K.S.A. 40-2c20 and 40-2d20, and amendments thereto.

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

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

18 (41) All financial analysis ratios and examination synopses
19 concerning insurance companies that are submitted to the
20 commissioner by the national association of insurance commissioners'
21 insurance regulatory information system.

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

24 (43) Market research, market plans, business plans and the terms
25 and conditions of managed care or other third-party contracts,
26 developed or entered into by the university of Kansas medical center
27 in the operation and management of the university hospital which the
28 chancellor of the university of Kansas or the chancellor's designee
29 determines would give an unfair advantage to competitors of the
30 university of Kansas medical center.

31 (44) The amount of franchise tax paid to the secretary of revenue
32 or the secretary of state by domestic corporations, foreign
33 corporations, domestic limited liability companies, foreign limited
34 liability companies, domestic limited partnership, foreign limited
35 partnership, domestic limited liability partnerships and foreign
36 limited liability partnerships.

37 (45) Records, other than criminal investigation records, the
38 disclosure of which would pose a substantial likelihood of revealing
39 security measures that protect: (A) Systems, facilities or equipment
40 used in the production, transmission or distribution of energy, water
41 or communications services; (B) transportation and sewer or
42 wastewater treatment systems, facilities or equipment; or (C) private
43 property or persons, if the records are submitted to the agency. For

1 purposes of this paragraph, security means measures that protect
2 against criminal acts intended to intimidate or coerce the civilian
3 population, influence government policy by intimidation or coercion
4 or to affect the operation of government by disruption of public
5 services, mass destruction, assassination or kidnapping. Security
6 measures include, but are not limited to, intelligence information,
7 tactical plans, resource deployment and vulnerability assessments.

8 (46) Any information or material received by the register of deeds
9 of a county from military discharge papers, DD Form 214. Such
10 papers shall be disclosed: To the military dischargee; to such
11 dischargee's immediate family members and lineal descendants; to
12 such dischargee's heirs, agents or assigns; to the licensed funeral
13 director who has custody of the body of the deceased dischargee; when
14 required by a department or agency of the federal or state government
15 or a political subdivision thereof; when the form is required to perfect
16 the claim of military service or honorable discharge or a claim of a
17 dependent of the dischargee; and upon the written approval of the
18 commissioner of veterans affairs, to a person conducting research.

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

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

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

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

37 (51) Records of a public agency on a public website which are
38 searchable by a keyword search and identify the home address or
39 home ownership of a law enforcement officer as defined in K.S.A.
40 2014 Supp. 21-5111, and amendments thereto, parole officer,
41 probation officer, court services officer or community correctional
42 services officer. Such individual officer shall file with the custodian of
43 such record a request to have such officer's identifying information

1 restricted from public access on such public website. Within 10
2 business days of receipt of such requests, the public agency shall
3 restrict such officer's identifying information from such public access.
4 Such restriction shall expire after five years and such officer may file
5 with the custodian of such record a new request for restriction at any
6 time.

7 (52) Records of a public agency on a public website which are
8 searchable by a keyword search and identify the home address or
9 home ownership of a federal judge, a justice of the supreme court, a
10 judge of the court of appeals, a district judge, a district magistrate
11 judge, *a municipal judge*, the United States attorney for the district of
12 Kansas, an assistant United States attorney, *a special assistant United*
13 *States attorney*, the attorney general, an assistant attorney general, a
14 ~~district attorney or county attorney or an assistant district attorney or~~
15 ~~assistant county attorney~~ *special assistant attorney general, a county*
16 *attorney, an assistant county attorney, a special assistant county attorney,*
17 *a district attorney, an assistant district attorney, a special assistant district*
18 *attorney, a city attorney, an assistant city attorney or a special assistant*
19 *city attorney*. Such person shall file with the custodian of such record a
20 request to have such person's identifying information restricted from
21 public access on such public website. Within 10 business days of
22 receipt of such requests, the public agency shall restrict such person's
23 identifying information from such public access. Such restriction shall
24 expire after five years and such person may file with the custodian of
25 such record a new request for restriction at any time.

26 (53) Records of a public agency that would disclose the name,
27 home address, zip code, e-mail address, phone number or cell phone
28 number or other contact information for any person licensed to carry
29 concealed handguns or of any person who enrolled in or completed
30 any weapons training in order to be licensed or has made application
31 for such license under the personal and family protection act, K.S.A.
32 2014 Supp. 75-7c01 et seq., and amendments thereto, shall not be
33 disclosed unless otherwise required by law.

34 (54) Records of a utility concerning information about cyber
35 security threats, attacks or general attempts to attack utility
36 operations provided to law enforcement agencies, the state
37 corporation commission, the federal energy regulatory commission,
38 the department of energy, the southwest power pool, the North
39 American electric reliability corporation, the federal communications
40 commission or any other federal, state or regional organization that
41 has a responsibility for the safeguarding of telecommunications,
42 electric, potable water, waste water disposal or treatment, motor fuel
43 or natural gas energy supply systems.

1 **(55) Records of a public agency containing information or reports**
2 **obtained and prepared by the office of the state bank commissioner in**
3 **the course of licensing or examining a person engaged in money**
4 **transmission business pursuant to K.S.A. 9-508 et seq., and**
5 **amendments thereto, shall not be disclosed except pursuant to K.S.A.**
6 **9-513c, and amendments thereto, or unless otherwise required by law.**

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

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

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

37 **(e) The provisions of this section shall not be construed to exempt**
38 **from public disclosure statistical information not descriptive of any**
39 **identifiable person.**

40 **(f) Notwithstanding the provisions of subsection (a), any public**
41 **record which has been in existence more than 70 years shall be open**
42 **for inspection by any person unless disclosure of the record is**
43 **specifically prohibited or restricted by federal law, state statute or rule**

1 of the Kansas supreme court or by a policy adopted pursuant to
2 K.S.A. 72-6214, and amendments thereto.

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

7 Sec. ~~10~~ 11. K.S.A. 2014 Supp. 45-222 is hereby amended to read as
8 follows: 45-222. (a) The district court of any county in which public
9 records are located shall have jurisdiction to enforce the purposes of this
10 act with respect to such records, by injunction, mandamus, *declaratory*
11 *judgment* or other appropriate order, in an action brought by any person,
12 the attorney general or a county or district attorney. *The district court may*
13 *require a defendant to complete training approved by the attorney general*
14 *concerning the requirements of the open records act.*

15 (b) In any action hereunder, the court shall determine the matter *de*
16 *novo*. The court on its own motion, or on motion of either party, may view
17 the records in controversy in camera before reaching a decision.

18 (c) *In any action hereunder, or under section 1, and amendments*
19 *thereto, the burden of proof shall be on the public agency to sustain its*
20 *action.*

21 (d) In any action hereunder, the court shall award costs and a
22 reasonable sum as an attorney's fee for services rendered in such action,
23 including proceedings on appeal, to be recovered and collected as part of
24 the costs to the plaintiff if the court finds that the agency's denial of access
25 to the public record was not in good faith and without a reasonable basis in
26 fact or law. The award shall be assessed against the public agency that the
27 court determines to be responsible for the violation.

28 ~~(d)~~(e) In any action hereunder in which the defendant is the
29 prevailing party, the court shall award to the defendant costs and a
30 reasonable sum as an attorney's fee for services rendered in such action,
31 including proceedings on appeal, to be recovered and collected as part of
32 the costs if the court finds that the plaintiff maintained the action not in
33 good faith and without a reasonable basis in fact or law.

34 ~~(e)~~(f) *In any action hereunder brought by the attorney general or a*
35 *county or district attorney, if the court finds that any provisions were*
36 *violated, the court: (1) May award the attorney general's or the county or*
37 *district attorney's reasonable expenses, investigation costs and attorney*
38 *fees; and (2) shall award the same if the court determines that the*
39 *violation was not in good faith and without a reasonable basis in fact or*
40 *law.*

41 (g) Except as otherwise provided by law, proceedings arising under
42 this section shall be assigned for hearing and trial at the earliest practicable
43 date.

1 ~~(f)~~(h) The provisions of subsections (c) and (d) concerning the
 2 awarding of costs and attorney fees for services rendered during an appeal
 3 shall apply only to actions which are based on causes of action accruing on
 4 or after July 1, 2004.

5 Sec. ~~11~~ **12.** K.S.A. 45-223 is hereby amended to read as follows: 45-
 6 223. (a) Any public agency subject to this act that knowingly violates any
 7 of the provisions of this act or that intentionally fails to furnish
 8 information as required by this act shall be liable for the payment of a civil
 9 penalty in an action brought by the attorney general or a county or district
 10 attorney, in a sum set by the court of not to exceed \$500 for each violation.

11 (b) Any civil penalty sued for and recovered hereunder by the
 12 attorney general shall be paid into the ~~state general~~ *attorney general's*
 13 *open government* fund. Any civil penalty sued for and recovered hereunder
 14 by a county or district attorney shall be paid into the general fund of the
 15 county in which the proceedings were instigated.

16 Sec. ~~12~~ **13.** K.S.A. 45-228 is hereby amended to read as follows: 45-
 17 228. (a) In investigating alleged violations of the ~~Kansas~~ open records act,
 18 the attorney general or county or district attorney may:

19 ~~(a)~~(1) Subpoena witnesses, evidence, *records*, documents or other
 20 material;

21 ~~(b)~~(2) take testimony under oath;

22 ~~(c)~~(3) examine or cause to be examined any *records or other*
 23 documentary material of whatever nature relevant to such alleged
 24 violations;

25 ~~(d)~~(4) require attendance during such examination of documentary
 26 material and take testimony under oath or acknowledgment in respect of
 27 any such documentary material; ~~and~~

28 ~~(e)~~(5) serve interrogatories; *and*

29 (6) *administer oaths and affirmations.*

30 (b) *If a public agency claims in writing that any records or*
 31 *documents, or any portion thereof, obtained by the attorney general or a*
 32 *county or district attorney pursuant to subsection (a) are exempt from*
 33 *disclosure for any reason, the attorney general or a county or district*
 34 *attorney shall not further disclose that record or document, nor the*
 35 *contents thereof, unless ordered to do so by a district court enforcing the*
 36 *open records act in connection with such record or document. Such*
 37 *records and documents in the possession of the attorney general or a*
 38 *county or district attorney shall not be subject to a request for inspection*
 39 *and copying under the open records act and shall not be subject to*
 40 *discovery, subpoena, or other process.*

41 (c) *Service by the attorney general or a county or district attorney of*
 42 *any interrogatories or subpoena upon any person, shall be made:*

43 (1) *By certified mail, return receipt requested, to the last known place*

1 *of business, residence or abode within or without this state; or*
 2 *(2) in the manner provided in the code of civil procedure as if a*
 3 *petition had been filed.*

4 *(d) If any person willfully fails or refuses to file any response to a*
 5 *request for information, records or other materials required by this*
 6 *section, respond to interrogatories or obey any subpoena issued by the*
 7 *attorney general or a county or district attorney, the attorney general or a*
 8 *county or district attorney may, after notice, apply to the district court of*
 9 *the county where the request, interrogatories or subpoena was issued, or*
 10 *of any other county where venue is proper, and after a hearing thereon the*
 11 *district court may:*

12 *(1) Issue an order requiring a response to the request for*
 13 *information, records or other materials, a response to the interrogatories*
 14 *or compliance with the subpoena; or*

15 *(2) grant such other relief as may be required, until the person*
 16 *provides the requested response for information, records or other*
 17 *materials, responds to the interrogatories or obeys the subpoena.*

18 ~~Sec. 13.~~ **14.** K.S.A. 2014 Supp. 75-4320 is hereby amended to read as
 19 follows: 75-4320. (a) Any member of a **public** body or agency subject to
 20 this act who knowingly violates any of the provisions of this act or who
 21 intentionally fails to furnish information as required by ~~subsection (b) of~~
 22 K.S.A. 75-4318(b), and amendments thereto, shall be liable for the
 23 payment of a civil penalty in an action brought by the attorney general or
 24 county or district attorney, in a sum set by the court of not to exceed \$500
 25 for each violation. In addition, any binding action which is taken at a
 26 meeting not in substantial compliance with the provisions of this act shall
 27 be voidable in any action brought by the attorney general or county or
 28 district attorney in the district court of the county in which the meeting
 29 was held within 21 days of the meeting, and the court shall have
 30 jurisdiction to issue injunctions or writs of mandamus to enforce the
 31 provisions of this act.

32 (b) Civil penalties sued for and recovered hereunder by the attorney
 33 general shall be paid into the ~~state general~~ *attorney general's open*
 34 *government* fund. Civil penalties sued for and recovered hereunder by a
 35 county or district attorney shall be paid into the general fund of the county
 36 where the proceedings were instigated.

37 (c) No fine shall be imposed pursuant to subsection (a) for violations
 38 of ~~subsection (f) of~~ K.S.A. 75-4318(f), and amendments thereto, which
 39 occur prior to July 1, 2009.

40 ~~Sec. 14.~~ **15.** K.S.A. 75-4320a is hereby amended to read as follows:
 41 75-4320a. (a) The district court of any county in which a meeting is held
 42 shall have jurisdiction to enforce the purposes of K.S.A. 75-4318 and 75-
 43 4319, and amendments thereto, with respect to such meeting, by

1 injunction, mandamus, *declaratory judgment* or other appropriate order, on
 2 application of any person. *The district court may require a defendant to*
 3 *complete training approved by the attorney general concerning the*
 4 *requirements of the open meetings act.*

5 (b) In any action hereunder *or under section 4, and amendments*
 6 *thereto*, the burden of proof shall be on the public body or agency to
 7 sustain its action.

8 (c) In any action hereunder, the court may award court costs to the
 9 person seeking to enforce the provisions of K.S.A. 75-4318 or 75-4319,
 10 and amendments thereto, if the court finds that the provisions of those
 11 statutes were violated. The award shall be assessed against the public
 12 ~~agency or~~ body **or agency** responsible for the violation.

13 (d) In any action hereunder in which the defendant is the prevailing
 14 party, the court may award to the defendant court costs if the court finds
 15 that the plaintiff maintained the action frivolously, not in good faith or
 16 without a reasonable basis in fact or law.

17 (e) *In any action hereunder brought by the attorney general or a*
 18 *county or district attorney, if the court finds that any provisions of K.S.A.*
 19 *75-4318 or 75-4319, and amendments thereto, were violated, the court:*
 20 *(1) May award the attorney general's or the county or district attorney's*
 21 *reasonable expenses, investigation costs and attorney fees; and (2) shall*
 22 *award the same if the court determines that the violation was not in good*
 23 *faith and without a reasonable basis in fact or law.*

24 (f) Except as otherwise provided by law, proceedings arising under
 25 this section shall take precedence over all other cases and shall be assigned
 26 for hearing and trial at the earliest practicable date.

27 ~~(f)~~(g) As used in this section, "meeting" has the meaning provided by
 28 K.S.A. 75-4317a, and amendments thereto.

29 Sec. ~~15~~ **16**. K.S.A. 2014 Supp. 75-4320b is hereby amended to read
 30 as follows: 75-4320b. (a) In investigating alleged violations of the ~~Kansas~~
 31 open meetings act, the attorney general or county or district attorney may:

32 ~~(a)~~(1) Subpoena witnesses, evidence, *records*, documents or other
 33 material;

34 ~~(b)~~(2) take testimony under oath;

35 ~~(c)~~(3) examine or cause to be examined any *records or other*
 36 documentary material of whatever nature relevant to such alleged
 37 violations;

38 ~~(d)~~(4) require attendance during such examination of documentary
 39 material and take testimony under oath or acknowledgment in respect of
 40 any such documentary material; ~~and~~

41 ~~(e)~~(5) serve interrogatories; *and*

42 (6) *administer oaths and affirmations.*

43 (b) *Service by the attorney general or a county or district attorney of*

1 *any interrogatories or subpoena upon any person, shall be made:*

2 *(1) By certified mail, return receipt requested, to the last known place*
3 *of business, residence or abode within or without this state; or*

4 *(2) in the manner provided in the code of civil procedure as if a*
5 *petition had been filed.*

6 *(c) If any person willfully fails or refuses to file any response to a*
7 *request for information, records or other materials required by this*
8 *section, respond to interrogatories or obey any subpoena issued by the*
9 *attorney general or a county or district attorney, the attorney general or a*
10 *county or district attorney may, after notice, apply to the district court of*
11 *the county where the request, interrogatories or subpoena was issued, or*
12 *of any other county where venue is proper, and after a hearing thereon the*
13 *district court may:*

14 *(1) Issue an order requiring a response to the request for*
15 *information, records or other materials, a response to interrogatories or*
16 *compliance with the subpoena; or*

17 *(2) grant such other relief as may be required, until the person*
18 *provides the requested response for information, records or other*
19 *materials, responds to the interrogatories or obeys the subpoena.*

20 ~~Sec. 16.~~ **17.** K.S.A. 45-223, 45-228 and 75-4320a and K.S.A. 2014
21 Supp. **45-221**, 45-222, 75-4320 and 75-4320b are hereby repealed.

22 ~~Sec. 17.~~ **18.** This act shall take effect and be in force from and after
23 its publication in the statute book.