

SENATE BILL No. 200

By Committee on Federal and State Affairs

2-16

1 AN ACT concerning the open records act; dealing with criminal
2 investigation records; amending K.S.A. 2016 Supp. 45-217 and 45-221
3 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2016 Supp. 45-217 is hereby amended to read as
7 follows: 45-217. As used in the open records act, unless the context
8 otherwise requires:

9 (a) "Business day" means any day other than a Saturday, Sunday or
10 day designated as a holiday by the congress of the United States, by the
11 legislature or governor of this state or by the respective political
12 subdivision of this state.

13 (b) "Clearly unwarranted invasion of personal privacy" means
14 revealing information that would be highly offensive to a reasonable
15 person, including information that may pose a risk to a person or property
16 and is not of legitimate concern to the public.

17 (c) (1) "Criminal investigation records" means: ~~(1)~~ (A) Every audio or
18 video recording made and retained by law enforcement using a body
19 camera or vehicle camera as defined by K.S.A. 2016 Supp. 45-254, and
20 amendments thereto; and ~~(2)~~

21 (B) records of an investigatory agency or criminal justice agency as
22 defined by K.S.A. 22-4701, and amendments thereto, compiled in the
23 process of preventing, detecting or investigating violations of criminal law;
24 ~~but~~.

25 (2) "Criminal investigative records" does not include: (A) Police
26 blotter entries, court records, rosters of inmates of jails or other
27 correctional or detention facilities or records pertaining to violations of
28 any traffic law other than vehicular homicide as defined by K.S.A. 21-
29 3405, prior to its repeal, or K.S.A. 2016 Supp. 21-5406, and amendments
30 thereto; and

31 (B) criminal investigative records in regard to missing person
32 investigations where the person has been missing for more than 25 years
33 and such records were collected 15 or more years ago.

34 (d) "Custodian" means the official custodian or any person designated
35 by the official custodian to carry out the duties of custodian of this act.

36 (e) "Official custodian" means any officer or employee of a public

1 agency who is responsible for the maintenance of public records,
2 regardless of whether such records are in the officer's or employee's actual
3 personal custody and control.

4 (f) (1) "Public agency" means the state or any political or taxing
5 subdivision of the state or any office, agency or instrumentality thereof, or
6 any other entity receiving or expending and supported in whole or in part
7 by the public funds appropriated by the state or by public funds of any
8 political or taxing subdivision of the state.

9 (2) "Public agency" shall not include:

10 (A) Any entity solely by reason of payment from public funds for
11 property, goods or services of such entity; or (B) any municipal judge,
12 judge of the district court, judge of the court of appeals or justice of the
13 supreme court.

14 (g) (1) "Public record" means any recorded information, regardless of
15 form, characteristics or location, which is made, maintained or kept by or
16 is in the possession of:

17 (A) Any public agency; or

18 (B) any officer or employee of a public agency pursuant to the
19 officer's or employee's official duties and which is related to the functions,
20 activities, programs or operations of any public agency.

21 (2) "Public record" shall include, but not be limited to, an agreement
22 in settlement of litigation involving the Kansas public employees
23 retirement system and the investment of moneys of the fund.

24 (3) Notwithstanding the provisions of subsection (g)(1), "public
25 record" shall not include:

26 (A) Records which are owned by a private person or entity and are
27 not related to functions, activities, programs or operations funded by
28 public funds. As used in this subparagraph, "private person" shall not
29 include an officer or employee of a public agency who is acting pursuant
30 to the officer's or employee's official duties;

31 (B) records which are made, maintained or kept by an individual
32 who is a member of the legislature or of the governing body of any
33 political or taxing subdivision of the state; or

34 (C) records of employers related to the employer's individually
35 identifiable contributions made on behalf of employees for workers
36 compensation, social security, unemployment insurance or retirement. The
37 provisions of this subparagraph shall not apply to records of employers of
38 lump-sum payments for contributions as described in this subparagraph
39 paid for any group, division or section of an agency.

40 (h) "Undercover agent" means an employee of a public agency
41 responsible for criminal law enforcement who is engaged in the detection
42 or investigation of violations of criminal law in a capacity where such
43 employee's identity or employment by the public agency is secret.

1 Sec. 2. K.S.A. 2016 Supp. 45-221 is hereby amended to read as
2 follows: 45-221. (a) Except to the extent disclosure is otherwise required
3 by law, a public agency shall not be required to disclose:

4 (1) Records the disclosure of which is specifically prohibited or
5 restricted by federal law, state statute or rule of the Kansas supreme court
6 or rule of the senate committee on confirmation oversight relating to
7 information submitted to the committee pursuant to K.S.A. 2016 Supp. 75-
8 4315d, and amendments thereto, or the disclosure of which is prohibited or
9 restricted pursuant to specific authorization of federal law, state statute or
10 rule of the Kansas supreme court or rule of the senate committee on
11 confirmation oversight relating to information submitted to the committee
12 pursuant to K.S.A. 2016 Supp. 75-4315d, and amendments thereto, to
13 restrict or prohibit disclosure.

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

16 (3) Medical, psychiatric, psychological or alcoholism or drug
17 dependency treatment records which pertain to identifiable patients.

18 (4) Personnel records, performance ratings or individually identifiable
19 records pertaining to employees or applicants for employment, except that
20 this exemption shall not apply to the names, positions, salaries or actual
21 compensation employment contracts or employment-related contracts or
22 agreements and lengths of service of officers and employees of public
23 agencies once they are employed as such.

24 (5) Information which would reveal the identity of any undercover
25 agent or any informant reporting a specific violation of law.

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

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

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

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

41 (10) (A) Criminal investigation records, except as provided herein.
42 The district court, in an action brought pursuant to K.S.A. 45-222, and
43 amendments thereto, may order disclosure of such records, subject to such

1 conditions as the court may impose, if the court finds that disclosure:

2 ~~(A)~~ (i) Is in the public interest;

3 ~~(B)~~ (ii) would not interfere with any prospective law enforcement
4 action, criminal investigation or prosecution;

5 ~~(C)~~ (iii) would not reveal the identity of any confidential source or
6 undercover agent;

7 ~~(D)~~ (iv) would not reveal confidential investigative techniques or
8 procedures not known to the general public;

9 ~~(E)~~ (v) would not endanger the life or physical safety of any person;
10 and

11 ~~(F)~~ (vi) would not reveal the name, address, phone number or any
12 other information which specifically and individually identifies the victim
13 of any sexual offense in article 35 of chapter 21 of the Kansas Statutes
14 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
15 Statutes Annotated, and amendments thereto.

16 If a public record is discretionarily closed by a public agency pursuant
17 to this subsection, the record custodian, upon request, shall provide a
18 written citation to the specific provisions of ~~paragraphs (A)~~
19 *subparagraphs (i) through (F) (vi)* that necessitate closure of that public
20 record.

21 *(B) Paragraph (A) shall not apply to records listed in K.S.A. 45-*
22 *217(c)(2)(B).*

23 (11) Records of agencies involved in administrative adjudication or
24 civil litigation, compiled in the process of detecting or investigating
25 violations of civil law or administrative rules and regulations, if disclosure
26 would interfere with a prospective administrative adjudication or civil
27 litigation or reveal the identity of a confidential source or undercover
28 agent.

29 (12) Records of emergency or security information or procedures of a
30 public agency, or plans, drawings, specifications or related information for
31 any building or facility which is used for purposes requiring security
32 measures in or around the building or facility or which is used for the
33 generation or transmission of power, water, fuels or communications, if
34 disclosure would jeopardize security of the public agency, building or
35 facility.

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

39 (14) Correspondence between a public agency and a private
40 individual, other than correspondence which is intended to give notice of
41 an action, policy or determination relating to any regulatory, supervisory or
42 enforcement responsibility of the public agency or which is widely
43 distributed to the public by a public agency and is not specifically in

1 response to communications from such a private individual.

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

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

8 (A) The information which the agency maintains on computer
9 facilities; and

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

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

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

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

23 (20) Notes, preliminary drafts, research data in the process of
24 analysis, unfunded grant proposals, memoranda, recommendations or
25 other records in which opinions are expressed or policies or actions are
26 proposed, except that this exemption shall not apply when such records are
27 publicly cited or identified in an open meeting or in an agenda of an open
28 meeting.

29 (21) Records of a public agency having legislative powers, which
30 records pertain to proposed legislation or amendments to proposed
31 legislation, except that this exemption shall not apply when such records
32 are:

33 (A) Publicly cited or identified in an open meeting or in an agenda of
34 an open meeting; or

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

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

41 (A) Publicly cited or identified in an open meeting or in an agenda of
42 an open meeting; or

43 (B) distributed to a majority of a quorum of any body which has

1 authority to take action or make recommendations to the public agency
2 with regard to the matters to which such records pertain.

3 (23) Library patron and circulation records which pertain to
4 identifiable individuals.

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

7 (25) Records which represent and constitute the work product of an
8 attorney.

9 (26) Records of a utility or other public service pertaining to
10 individually identifiable residential customers of the utility or service.

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

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

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

17 (A) The name; photograph and other identifying information;
18 sentence data; parole eligibility date; custody or supervision level;
19 disciplinary record; supervision violations; conditions of supervision,
20 excluding requirements pertaining to mental health or substance abuse
21 counseling; location of facility where incarcerated or location of parole
22 office maintaining supervision and address of a releasee whose crime was
23 committed after the effective date of this act shall be subject to disclosure
24 to any person other than another inmate or releasee, except that the
25 disclosure of the location of an inmate transferred to another state pursuant
26 to the interstate corrections compact shall be at the discretion of the
27 secretary of corrections;

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

32 (C) the information provided to the law enforcement agency pursuant
33 to the sex offender registration act, K.S.A. 22-4901 et seq., and
34 amendments thereto, shall be subject to disclosure to any person, except
35 that the name, address, telephone number or any other information which
36 specifically and individually identifies the victim of any offender required
37 to register as provided by the Kansas offender registration act, K.S.A. 22-
38 4901 et seq., and amendments thereto, shall not be disclosed; and

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

1 (30) Public records containing information of a personal nature where
2 the public disclosure thereof would constitute a clearly unwarranted
3 invasion of personal privacy.

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

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

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

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

20 (35) Any report or record which is made pursuant to K.S.A. 65-4922,
21 65-4923 or 65-4924, and amendments thereto, and which is privileged
22 pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

23 (36) Information which would reveal the precise location of an
24 archeological site.

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

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

32 (39) Memoranda and related materials required to be used to support
33 the annual actuarial opinions submitted pursuant to K.S.A. 40-409(b), and
34 amendments thereto.

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

37 (41) All financial analysis ratios and examination synopses
38 concerning insurance companies that are submitted to the commissioner by
39 the national association of insurance commissioners' insurance regulatory
40 information system.

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

43 (43) Market research, market plans, business plans and the terms and

1 conditions of managed care or other third-party contracts, developed or
2 entered into by the university of Kansas medical center in the operation
3 and management of the university hospital which the chancellor of the
4 university of Kansas or the chancellor's designee determines would give an
5 unfair advantage to competitors of the university of Kansas medical center.

6 (44) The amount of franchise tax paid to the secretary of revenue or
7 the secretary of state by domestic corporations, foreign corporations,
8 domestic limited liability companies, foreign limited liability companies,
9 domestic limited partnership, foreign limited partnership, domestic limited
10 liability partnerships and foreign limited liability partnerships.

11 (45) Records, other than criminal investigation records, the disclosure
12 of which would pose a substantial likelihood of revealing security
13 measures that protect: (A) Systems, facilities or equipment used in the
14 production, transmission or distribution of energy, water or
15 communications services; (B) transportation and sewer or wastewater
16 treatment systems, facilities or equipment; or (C) private property or
17 persons, if the records are submitted to the agency. For purposes of this
18 paragraph, security means measures that protect against criminal acts
19 intended to intimidate or coerce the civilian population, influence
20 government policy by intimidation or coercion or to affect the operation of
21 government by disruption of public services, mass destruction,
22 assassination or kidnapping. Security measures include, but are not limited
23 to, intelligence information, tactical plans, resource deployment and
24 vulnerability assessments.

25 (46) Any information or material received by the register of deeds of
26 a county from military discharge papers, DD Form 214. Such papers shall
27 be disclosed: To the military dischargée; to such dischargée's immediate
28 family members and lineal descendants; to such dischargée's heirs, agents
29 or assigns; to the licensed funeral director who has custody of the body of
30 the deceased dischargée; when required by a department or agency of the
31 federal or state government or a political subdivision thereof; when the
32 form is required to perfect the claim of military service or honorable
33 discharge or a claim of a dependent of the dischargée; and upon the written
34 approval of the commissioner of veterans affairs, to a person conducting
35 research.

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

40 (48) Policy information provided by an insurance carrier in
41 accordance with K.S.A. 44-532(h)(1), and amendments thereto. This
42 exemption shall not be construed to preclude access to an individual
43 employer's record for the purpose of verification of insurance coverage or

1 to the department of labor for their business purposes.

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

6 (50) Information provided by providers to the local collection point
7 administrator or to the 911 coordinating council pursuant to the Kansas
8 911 act, and amendments thereto, upon request of the party submitting
9 such records.

10 (51) Records of a public agency on a public website which are
11 searchable by a keyword search and identify the home address or home
12 ownership of a law enforcement officer as defined in K.S.A. 2016 Supp.
13 21-5111, and amendments thereto, parole officer, probation officer, court
14 services officer or community correctional services officer. Such
15 individual officer shall file with the custodian of such record a request to
16 have such officer's identifying information restricted from public access on
17 such public website. Within 10 business days of receipt of such requests,
18 the public agency shall restrict such officer's identifying information from
19 such public access. Such restriction shall expire after five years and such
20 officer may file with the custodian of such record a new request for
21 restriction at any time.

22 (52) Records of a public agency on a public website which are
23 searchable by a keyword search and identify the home address or home
24 ownership of a federal judge, a justice of the supreme court, a judge of the
25 court of appeals, a district judge, a district magistrate judge, a municipal
26 judge, the United States attorney for the district of Kansas, an assistant
27 United States attorney, a special assistant United States attorney, the
28 attorney general, an assistant attorney general, a special assistant attorney
29 general, a county attorney, an assistant county attorney, a special assistant
30 county attorney, a district attorney, an assistant district attorney, a special
31 assistant district attorney, a city attorney, an assistant city attorney or a
32 special assistant city attorney. Such person shall file with the custodian of
33 such record a request to have such person's identifying information
34 restricted from public access on such public website. Within 10 business
35 days of receipt of such requests, the public agency shall restrict such
36 person's identifying information from such public access. Such restriction
37 shall expire after five years and such person may file with the custodian of
38 such record a new request for restriction at any time.

39 (53) Records of a public agency that would disclose the name, home
40 address, zip code, e-mail address, phone number or cell phone number or
41 other contact information for any person licensed to carry concealed
42 handguns or of any person who enrolled in or completed any weapons
43 training in order to be licensed or has made application for such license

1 under the personal and family protection act, K.S.A. 2016 Supp. 75-7c01
2 et seq., and amendments thereto, shall not be disclosed unless otherwise
3 required by law.

4 (54) 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 federal
9 communications commission or any other federal, state or regional
10 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 (55) Records of a public agency containing information or reports
14 obtained and prepared by the office of the state bank commissioner in the
15 course of licensing or examining a person engaged in money transmission
16 business pursuant to K.S.A. 9-508 et seq., and amendments thereto, shall
17 not be disclosed except pursuant to K.S.A. 9-513c, and amendments
18 thereto, or unless otherwise required by law.

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

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

35 (d) If a public record contains material which is not subject to
36 disclosure pursuant to this act, the public agency shall separate or delete
37 such material and make available to the requester that material in the
38 public record which is subject to disclosure pursuant to this act. If a public
39 record is not subject to disclosure because it pertains to an identifiable
40 individual, the public agency shall delete the identifying portions of the
41 record and make available to the requester any remaining portions which
42 are subject to disclosure pursuant to this act, unless the request is for a
43 record pertaining to a specific individual or to such a limited group of

1 individuals that the individuals' identities are reasonably ascertainable, the
2 public agency shall not be required to disclose those portions of the record
3 which pertain to such individual or individuals.

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

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

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

17 Sec. 3. K.S.A. 2016 Supp. 45-217 and 45-221 are hereby repealed.

18 Sec. 4. This act shall take effect and be in force from and after its
19 publication in the statute book.