

SENATE BILL No. 454

By Committee on Federal and State Affairs

2-17

1 AN ACT concerning open records; creating exemptions in the open
2 records act for election security records and cyber security records;
3 amending K.S.A. 2019 Supp. 45-221 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2019 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 ~~that~~ 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. 75-4315d, and
13 amendments thereto, or the disclosure of which is prohibited or restricted
14 pursuant to specific authorization of federal law, state statute or rule of the
15 Kansas supreme court or rule of the senate committee on confirmation
16 oversight relating to information submitted to the committee pursuant to
17 K.S.A. 75-4315d, and amendments thereto, to restrict or prohibit
18 disclosure.

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

21 (3) Medical, psychiatric, psychological or alcoholism or drug
22 dependency treatment records ~~which~~ ~~that~~ 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~~ ~~that~~ would reveal the identity of any
30 undercover 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
33 the appointment of persons to fill a vacancy in an elected office.

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

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

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

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

14 (A) Is in the public interest;

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

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

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

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

22 (F) would not reveal the name, address, phone number or any other
23 information ~~which~~ *that* specifically and individually identifies the victim
24 of any sexual offense in article 35 of chapter 21 of the Kansas Statutes
25 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
26 Statutes Annotated, and amendments thereto.

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

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

37 (12) Records of emergency or security information or procedures of a
38 public agency, or plans, drawings, specifications or related information for
39 any building or facility ~~which~~ *that* is used for purposes requiring security
40 measures in or around the building or facility or ~~which~~ *that* is used for the
41 generation or transmission of power, water, fuels or communications, if
42 disclosure would jeopardize security of the public agency, building or
43 facility.

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

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

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

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

16 (A) The information ~~which~~*that* the agency maintains on computer
17 facilities; and

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

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

23 (18) Plans, designs, drawings or specifications ~~which~~*that* are
24 prepared by a person other than an employee of a public agency or records
25 ~~which~~*that* are the property of a private person.

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

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

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

6 (A) Publicly cited or identified in an open meeting or in an agenda of
7 an open meeting; or

8 (B) distributed to a majority of a quorum of any body ~~which~~*that* has
9 authority to take action or make recommendations to the public agency
10 with regard to the matters to which such records pertain.

11 (23) Library patron and circulation records ~~which~~*that* pertain to
12 identifiable individuals.

13 (24) Records ~~which~~*that* are compiled for census or research purposes
14 and which pertain to identifiable individuals.

15 (25) Records ~~which~~*that* represent and constitute the work product of
16 an attorney.

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

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

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

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

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

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

40 (C) the information provided to the law enforcement agency pursuant
41 to the sex offender registration act, K.S.A. 22-4901 et seq., and
42 amendments thereto, shall be subject to disclosure to any person, except
43 that the name, address, telephone number or any other information which

1 specifically and individually identifies the victim of any offender required
2 to register as provided by the Kansas offender registration act, K.S.A. 22-
3 4901 et seq., and amendments thereto, shall not be disclosed; and

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

9 (30) Public records containing information of a personal nature where
10 the public disclosure thereof would constitute a clearly unwarranted
11 invasion of personal privacy.

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

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

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

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

28 (35) Any report or record ~~which~~-that is made pursuant to K.S.A. 65-
29 4922, 65-4923 or 65-4924, and amendments thereto, and ~~which~~-that is
30 privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments
31 thereto.

32 (36) Information ~~which~~-that would reveal the precise location of an
33 archeological site.

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

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

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

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

3 (41) All financial analysis ratios and examination synopses
4 concerning insurance companies that are submitted to the commissioner by
5 the national association of insurance commissioners' insurance regulatory
6 information system.

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

9 (43) Market research, market plans, business plans and the terms and
10 conditions of managed care or other third-party contracts, developed or
11 entered into by the university of Kansas medical center in the operation
12 and management of the university hospital ~~which~~ *that* the chancellor of the
13 university of Kansas or the chancellor's designee determines would give an
14 unfair advantage to competitors of the university of Kansas medical center.

15 (44) The amount of franchise tax paid to the secretary of revenue or
16 the secretary of state by domestic corporations, foreign corporations,
17 domestic limited liability companies, foreign limited liability companies,
18 domestic limited partnership, foreign limited partnership, domestic limited
19 liability partnerships and foreign limited liability partnerships.

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

34 (46) Any information or material received by the register of deeds of
35 a county from military discharge papers, DD Form 214. Such papers shall
36 be disclosed: To the military dischargee; to such dischargee's immediate
37 family members and lineal descendants; to such dischargee's heirs, agents
38 or assigns; to the licensed funeral director who has custody of the body of
39 the deceased dischargee; when required by a department or agency of the
40 federal or state government or a political subdivision thereof; when the
41 form is required to perfect the claim of military service or honorable
42 discharge or a claim of a dependent of the dischargee; and upon the written
43 approval of the commissioner of veterans affairs, to a person conducting

1 research.

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

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

11 (49) An individual's e-mail address, cell phone number and other
12 contact information ~~which~~ that has been given to the public agency for the
13 purpose of public agency notifications or communications which are
14 widely distributed to the public.

15 (50) Information provided by providers to the local collection point
16 administrator or to the 911 coordinating council pursuant to the Kansas
17 911 act, and amendments thereto, upon request of the party submitting
18 such records.

19 (51) Records of a public agency on a public website ~~which~~ that are
20 searchable by a keyword search and identify the home address or home
21 ownership of a law enforcement officer as defined in K.S.A. 2019 Supp.
22 21-5111, and amendments thereto, parole officer, probation officer, court
23 services officer or community correctional services officer. Such
24 individual officer shall file with the custodian of such record a request to
25 have such officer's identifying information restricted from public access on
26 such public website. Within 10 business days of receipt of such requests,
27 the public agency shall restrict such officer's identifying information from
28 such public access. Such restriction shall expire after five years and such
29 officer may file with the custodian of such record a new request for
30 restriction at any time.

31 (52) Records of a public agency on a public website ~~which~~ that are
32 searchable by a keyword search and identify the home address or home
33 ownership of a federal judge, a justice of the supreme court, a judge of the
34 court of appeals, a district judge, a district magistrate judge, a municipal
35 judge, the United States attorney for the district of Kansas, an assistant
36 United States attorney, a special assistant United States attorney, the
37 attorney general, an assistant attorney general, a special assistant attorney
38 general, a county attorney, an assistant county attorney, a special assistant
39 county attorney, a district attorney, an assistant district attorney, a special
40 assistant district attorney, a city attorney, an assistant city attorney or a
41 special assistant city attorney. Such person shall file with the custodian of
42 such record a request to have such person's identifying information
43 restricted from public access on such public website. Within 10 business

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

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

13 (54) Records of a utility concerning information about cyber security
14 threats, attacks or general attempts to attack utility operations provided to
15 law enforcement agencies, the state corporation commission, the federal
16 energy regulatory commission, the department of energy, the southwest
17 power pool, the North American electric reliability corporation, the federal
18 communications commission or any other federal, state or regional
19 organization that has a responsibility for the safeguarding of
20 telecommunications, electric, potable water, waste water disposal or
21 treatment, motor fuel or natural gas energy supply systems.

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

28 (56) *Records of election security information or procedures,*
29 *including:*

30 (A) *Records of measures taken to protect elections and voting*
31 *infrastructure from tampering and infiltration;*

32 (B) *records of threats, attacks on and vulnerabilities of voting*
33 *equipment, election office networks and practices, voter registration*
34 *databases and election or voting facilities; and*

35 (C) *records of audits and assessments of election security.*

36 (57) *Records of a public agency concerning information about cyber*
37 *security threats, including:*

38 (A) *Records of any cyber attack or cyber breach of a public agency;*

39 (B) *records of any defensive measures considered or employed to*
40 *detect, prevent or mitigate a known or suspected cyber security threat to a*
41 *public agency; and*

42 (C) *records of any cyber security vulnerability at a public agency.*

43 (b) Except to the extent disclosure is otherwise required by law or as

1 appropriate during the course of an administrative proceeding or on appeal
2 from agency action, a public agency or officer shall not disclose financial
3 information of a taxpayer ~~which~~*that* may be required or requested by a
4 county appraiser or the director of property valuation to assist in the
5 determination of the value of the taxpayer's property for ad valorem
6 taxation purposes; or any financial information of a personal nature
7 required or requested by a public agency or officer, including a name, job
8 description or title revealing the salary or other compensation of officers,
9 employees or applicants for employment with a firm, corporation or
10 agency, except a public agency. Nothing contained herein shall be
11 construed to prohibit the publication of statistics, so classified as to
12 prevent identification of particular reports or returns and the items thereof.

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

16 (d) If a public record contains material ~~which~~*that* is not subject to
17 disclosure pursuant to this act, the public agency shall separate or delete
18 such material and make available to the requester that material in the
19 public record ~~which~~*that* is subject to disclosure pursuant to this act. If a
20 public record is not subject to disclosure because it pertains to an
21 identifiable individual, the public agency shall delete the identifying
22 portions of the record and make available to the requester any remaining
23 portions ~~which~~*that* are subject to disclosure pursuant to this act, unless the
24 request is for a record pertaining to a specific individual or to such a
25 limited group of individuals that the individuals' identities are reasonably
26 ascertainable, the public agency shall not be required to disclose those
27 portions of the record ~~which~~*that* pertain to such individual or individuals.

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

31 (f) Notwithstanding the provisions of subsection (a), any public
32 record ~~which~~*that* has been in existence more than 70 years shall be open
33 for inspection by any person unless disclosure of the record is specifically
34 prohibited or restricted by federal law, state statute or rule of the Kansas
35 supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and
36 amendments thereto.

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

41 Sec. 2. K.S.A. 2019 Supp. 45-221 is hereby repealed.

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