

**KOMA/KORA COMPLAINTS RECEIVED BY THE ATTORNEY  
GENERAL'S OFFICE  
REPORT PURSUANT TO K.S.A. 2007 SUPP. 75-753**

January 2007 through December 2007

**KORA COMPLAINTS**

**STATE AGENCIES**

**Kansas Department of Corrections**

Contact: Inmate. Received by office May 1, 2007, but dated April 23, 2007.

Allegation: KDOC denied access to certain records citing K.S.A. 2006 45-221 (a)(29)(A), discretionary closure of inmate records.

Action taken: Responded with letter, noting that this office may not assist Kansas inmates with such KORA complaints. We suggested private legal counsel would be in a better position to provide the requested assistance.

Contact: Inmate. Received by our office January 17, 2007 although the letter was dated December 20, 2006.

Allegation: KDOC had not responded to a records request in a timely manner.

Action taken: KDOC had requested additional information in order to estimate the cost of reproducing the records. It appeared that the response was timely because when it was received. The matter was resolved when the requested records were provided.

**Kansas Department of Health & Environment (KDHE)**

Contact: Kansas resident. Letter received April 2, 2007.

Allegation: Requested records concerning a swine operation, specifically the permits granted and ownership information. The resident complained about a lack of a timely response (the request was made on March 19 and although there was a telephone message asking for clarification on March 22 there had been no follow-up).

Action Taken: Requested a status report from KDHE about the request. KDHE attorney admitted that a delay had occurred due to the staff member

who had the information was on emergency leave because of a death in the family. Upon the staff member's return, they contacted the requestor, apologized and made certain they had the information requested. KDHE acknowledged that it would have been better to have another staff member handle the request and would take steps to assure that happened in the future. Based upon the short time delay (one week), remedial actions and KDHE response, no further inquiries were made.

### **Kansas Legislative Research Department**

Contact: Kansas resident. Letters received on February 13, 2007 and March 6, 2007.

Allegation: Legislative Research refused to provide the requestor with draft reports for the Joint Committee on Corrections and Juvenile Justice Oversight and the Kansas Recodification, Rehabilitation and Restoration Committee. The reports were due to the legislature on January 9, 2007, per K.S.A. 22-5101(h). Legislative Research declined to provide that information/records based upon K.S.A. 2006 45-221(a)(20) the reports were in draft form and had not been approved by the committees.

Action Taken: We reviewed K.S.A. 22-5101(h) and determined the deadline date was directory and not mandatory. As such, the records could be withheld until there were approved, regardless of what the statute provided.

### **Kansas Department of Social and Rehabilitation Services**

Contact: Kansas resident. Received several emails beginning on February 22, 2007 through March 19, 2007.

Allegation: SRS had refused to provide several documents including job descriptions, and other personnel information of employees involved in an action involving the complainant.

Action Taken: Contacted the SRS by letter and clarified what information was included in the KORA and what may be excluded. SRS provided the job descriptions, but declined to release personal information about their employees per K.S.A. 2006 Supp. 45-221(a)(4).

## **Kansas Department of Revenue**

Contact: Kansas Resident. Faxed a letter to this office on October 9, 2007.

Allegation: Citizen had requested information about whether her son was licensed to operate a motorcycle. The local DMV had refused to disclose the information.

Action Taken: This office contacted the records custodian for the DOR and was informed that the information was closed by federal law. (Driver Privacy Protection Act of 1994.) We responded by letter and provided the form necessary to make such a request and directed her to make her application using one of the allowed exceptions.

## **COUNTIES**

### **Haskell County**

Contact: Representative McKinney forwarding a citizen complaint. Materials received February, 2007.

Allegation: KORA documents had not been provided in the form requested (certified), some not provided and a fee of \$18.70 for the documents provided. The letter also included allegations of other statutory violations by the County.

Action Taken: Responded by letter with a detailed explanation of KORA that does not require that record copies be certified, records need not be created in order to respond to a request and fees may be charged based upon actual cost recovery. The other issues were addressed by reference to statutes or Attorney General opinions.

### **Unified Government of Wyandotte County /Kansas City, Kansas**

Contact: Chief counsel for the Unified Government requested an opinion about release of certain records and redaction of personal information. Letter received March, 2007.

Allegation: A private vendor objected to a change in policy where updated property records were no longer provided in electronic format because of privacy concerns. The Unified Government did agree to provide the records after redaction. The vendor protested.

Action Taken: Responded by informal opinion relying upon the holdings of *Data Tree v. Meek*, 279 Kan. 445 (2005). Personal information may be redacted and the costs collected from the requesting party.

### **Edwards County Attorney's Office**

Contact: Citizen. Letter received March, 2007.

Allegation: Failure of county attorney to provide requested records.

Action Taken: We investigated and concluded there had been no violation of the KORA because the records requested were closed by statute.

### **Scott County Sheriff and District Court Clerk**

Contact: Editor of the *Southwest Daily Times*. Several emails received by this office beginning on April 3, 2007.

Allegation: County not providing requested answers and information related to a criminal case in a timely manner.

Action Taken: We responded by letter and provided copy of the KORA outline. The requested records were provided and the matter closed.

### **Morton County Attorney's Office**

Contact: *Garden City Telegram*. Faxed letter received July, 2007.

Allegation: Failure to provide the requested copy of an autopsy report.

Action Taken: Referred the matter to the County Attorney for resolution. He responded by letter stating he was not the custodian for autopsy records and the request should be directed to the Morton County Coroner. No further action was taken.

### **Harvey County Sheriff's Office**

Contact: Inmate. Letter received October, 2007.

Allegation: Sheriff had refused to provide certain records.

Action Taken: Referred the matter to the County Attorney. No further contact was made by any party.

**Cherokee County Sheriff's Office**

Contact: Attorney requested operating procedures and protocols. Letter received March, 2007.

Allegation: Policies requested were not received.

Action Taken: Referred the matter to the County Attorney. No further contact was made by any party.

**CITIES**

**City of Lenexa** (Johnson County)

Contact: Citizen. Email received January, 2007.

Allegation: Requested certain police and criminal records and the request was denied.

Action Taken: Responded by email suggesting providing a copy of the original request and the denial with the citation to the law being relied upon. No further correspondence was received, as it would have been referred to the Johnson County District Attorney for investigation and action per our policy.

**City of Morrell** (Brown County)

Contact: Senator Pyle forwarding a citizen complaint. Information received January, 2007.

Allegation: An ongoing dispute with the city over code violations.

Action Taken: Provided the Senator with copies of correspondence this office had with the citizen in November, 2006.

**City of Smith Center Police Department** (Smith County)

Contact: Citizen. Faxed letter received April, 2007.

Allegation: City police not providing requested copies of Standard Offense Report per request.

Action Taken: Referred the matter to the Smith County Attorney per our policy. Received a response from the County Attorney explaining the incident involved generated no Standard Offense Report and no document existed. County Attorney reported the citizen has had a history of mental illness and believes records exist that do not.

**City of Topeka** (Shawnee County)

Contact: Citizen. Letters received beginning March, 2007.

Allegation: City's failure to provide with copies of contracts and construction documents for a project in a timely manner.

Action Taken: Referred complaint to the Shawnee County District Attorney. The complaint was investigated and no violation was found.

**City of Canton** (McPherson County)

Contact: Citizen. Letter received July, 2007.

Allegation: Failure to reply in a timely manner and failure to provide all requested records.

Action Taken: Referred the complaints to McPherson County Attorney per office policy. County Attorney investigated and determined once clarification of the records was made, the request was completed. There was no violation.

**City of Hiawatha Police Department** (Brown County)

Contact: Citizen. Letter received September, 2007.

Allegation: The police department would not provide investigation records of a death.

Action Taken: This office responded to the request as no investigation was necessary. K.S.A. 45-221(a)(10) allows closure of some types of records as a part of a police investigation. Informed the individual that they may request a detailed reason for the denial and seek court review. No further contact was made.

## **OTHER PUBLIC ENTITIES**

### **Wyandotte Board of Public Utilities**

Contact: Citizen. Email received March, 2007.

Allegation: Board of Public Utilities was not providing requested records.

Action Taken: Referred complaint to the Wyandotte District Attorney for investigation. No further contact was made.

### **Minneha Township**

Contact: Citizen. Letter received October, 2007.

Allegation: Excessive fees for providing public documents.

Action Taken: Responded to the citizen about the complaint procedure and copied the Sedgwick County District Attorney. No further action was taken.

### **Kaw Valley Drainage District**

Contact: Kansas Aggregate Producers Association. Letter received August, 2007.

Allegation: Records were not being produced.

Action Taken: Referred the issue to the Shawnee County District Attorney. The matter was resolved and records produced.

### **Jewell County Hospital**

Contact: Citizen. Letter received November, 2007.

Allegation: Failure to provide employee compensation information as requested.

Action Taken: Because the County Attorney is also the Hospital Board attorney, this office conducted the investigation and determined that a violation had occurred. Because the County/ Hospital Attorney had already intervened and made sure the documents were provided, no further action was taken.

# KOMA COMPLAINTS

## STATE AGENCIES

### Kansas Water Authority

- Complainant: Senator Huelskamp. Letter received April 26, 2007.
- Allegation: Inappropriate discussion of an appointed member of a Basin Advisory Committee during an executive session. (Only nonelected personnel may be discussed in executive session per K.S.A. 2007 Supp. 75-4319(b)(1) and discussed in Attorney General Opinion 87-10.)
- Action Taken: This office investigated and determined that there had been a "technical violation," because the Basin Advisory Committee may have entered into the executive session under the attorney-client exception to KOMA, K.S.A. 2007 Supp. 75-4319(b)(2). Therefore, no further action was taken.

## COUNTIES

### Dickinson County Commissioners

- Contact: Several citizens. Two letters received in January and February 2007.
- Allegation: County commissioners resumed open discussion of county business prior to the time noted by the motion to enter into executive session on several occasions. Also, failing to record an executive session motion in the minutes.
- Action Taken: This office investigated and determined that the allegations were correct and entered into a settlement agreement with the commissioners that provided for KORA/KOMA training and avoidance of future violations.

### Mitchell County

- Contact: Citizen. Letter received September, 2007.
- Allegation: Inappropriate use of an executive session by including a staff member and conducting interviews of potential candidates for an appointed, non-elected position.
- Action Taken: Referred to the Mitchell County attorney with a copy of the complaint. (County attorney investigated and determined no violation- see Counties Report.)



## **Wallace County Commissioners and Wallace County Economic Development Board**

Contact: Citizens including the Editor of *The Western Times*. Complaint letter received May 10, 2007.

Allegation: Failure to provide notice, as requested, for a meeting and the inclusion of a blanket statement that informal discussion may occur before and after a scheduled meeting.

Action Taken: We referred the complaint to the Wallace County attorney, who investigated and resolved the issues. (See Counties Report.)

## **Kiowa County Commissioners**

Contact: County Commissioner. Letter received April, 2007.

Allegation: Discussion outside of a called meeting for the purpose of discussing insurance.

Action Taken: The county attorney brought the matter to our attention and it was resolved by a settlement agreement for KOMA/KORA training. (See Counties Report.)

## **Mitchell County Commission**

Contact: Citizen. Letter received April, 2007.

Allegation: Commission used executive sessions to confer with other county elected officials about non-elected employees.

Action Taken: Wrote to County attorney and complainant explaining that K.S.A. 75-4319(b) permits executive session discussions concerning employees and that includes discussions with other elected officials, if the commissioners believe their input is important. However, no binding action may be taken in executive session.

## **CITIES**

### **City of Beloit (Mitchell County)**

Contact: Citizen. Received June, 2007.

Allegation: Failure to provide notice of special May 31, 2007 meeting.

Action Taken: The Mitchell County attorney copied this office with his findings that a violation had occurred and issued a warning to the City. (See Counties Report.)

**City of Garfield** (Pawnee County)

Contact: Complaint referred by the County attorney because of a conflict of interest. Letter received August, 2007.

Allegation: Failing to make a proper motion to enter into executive session per K.S.A. 75-4319 and discussing a topic not allowed in executive session.

Action Taken: Requested the assistance of the Pawnee County Sheriff to investigate. We determined a violation had occurred and entered into a settlement agreement for KORA/KOMA training and avoiding future violations.

**City of Elk City** (Montgomery County)

Contact: Citizen. Letter received in March, 2007.

Allegation: The City Council made a binding decision in executive session.

Action Taken: Forwarded complaint to the Montgomery county attorney, per policy. The action was rescinded in open session and a settlement agreement provided for KOMA/KORA training to avoid future violations. (See Counties Report.)

**City Lawrence** (Douglas County)

Contact: The District Attorney referred a complaint to this office because of a conflict of interest. Letter received November, 2007.

Allegation: City Council recessed into executive session for the purpose of attorney-client discussions and included a third party, thus, breaking the privilege.

Action Taken: This office investigated and determined that the inclusion of the third party did negate the consultation with the city attorney as privileged. We entered into a consent agreement with the city council whereby they admit to the violation, agreed to not violate in the future, and agreed to training on KOMA.

## **OTHER ENTITIES**

### **USD 475** (Geary County)

Contact: Geary County attorney copied this office with a letter to the school board of USD 475. Letter received July, 2007.

Allegation: Potential violation of KOMA by the use of email, in effect a serial meeting, by the President of the school board.

Action Taken: A warning letter was issued.

### **USD 464** (Leavenworth County)

Contact: Editor, *The Mirror*. Letter received December, 2007.

Allegation: Requested this office review the findings of the county attorney that no KOMA violation had occurred. The initial complaint concerned the use of an executive session used to discuss matters with the board's attorney. Complainant believed that the topic should have been openly discussed.

Action Taken: This office reviewed the materials and found no reason to review the decision.

### **USD 259** (Sedgwick County)

Contact: Attorney for the *Wichita Eagle*. Letter received December, 2007.

Allegation: An advisory group had been created for the Superintendent and was not conducting the meetings subject to KOMA.

Action Taken: Referred complaint to Sedgwick District Attorney for investigation.

### **Seward County Council on Aging, Inc.** (Seward County)

Contact: Citizen. Complaint letter received October, 2007.

Allegation: Inquiry to determine if the Council was subject to KOMA, and if so, did they violate it ?

Action Taken: Referred the inquiry to Seward County attorney.

**Merriam Drainage District** (Johnson County)

Contact: Merriam City Attorney. Letter received July, 2007.

Allegation: Failure to provide meeting notice when requested.

Action Taken A concurrent complaint was made to the District Attorney and per office policy, the complainant was notified that this office will take up the complaint if the District Attorney declines.

**USD 481** (Dickinson County)

Contact: Citizen. Letter received April, 2007.

Allegation: Failure to provide meeting notice when requested.

Action Taken: Per office policy, referred to the Dickinson County attorney.

**Jewell County Hospital Board** (Jewell County)

Contact: Citizen. Letter received November, 2007.

Allegation: Inappropriate discussion of a change of bylaws in an executive session. Discussion outside of an open meeting to consider the appointment of a temporary administrator.

Action Taken: After investigation, this office determined a "technical violation" of KOMA occurred because the subject of the bylaws could be discussed in executive session under the attorney-client consultation, but not under the subject that was included in the motion, discussion of non-elected personnel. No further action was taken. There was no evidence of any discussion outside an open meeting to discuss the appointment of a temporary administrator.