

**KOMA/KORA COMPLAINTS RECEIVED BY THE
ATTORNEY GENERAL'S OFFICE
REPORT PURSUANT TO K.S.A. 2013 SUPP. 75-753**

**Fiscal Year 2013
(July 1, 2012 through June 30, 2013)**

KORA COMPLAINTS

STATE AGENCIES

Kansas Department of Corrections

Contact: An inmate requested records from the Kansas Department of Corrections regarding available Chapel callouts from various prisons on various dates. The Department denied the request based on the KORA exception for security information. The request was then amended to limit it to records of available religious services on certain dates. The requester felt that a response to the amended request was not received in a timely manner, and a complaint was made to this office.

Allegation: The Department did not provide requested records in a timely manner.

Action Taken: This office asked the Department to review the status of the amended request. The Department subsequently advised this office that the records had been provided to the requester. Because the records were provided and the matter was resolved informally, no further action by this office was necessary.

Contact: A KORA request was made to the El Dorado Correctional Facility for copies of nominations for employee of the quarter. A copy of the sole nomination for the quarter was provided, with the name of the nominator redacted. A complaint was made to this office.

Allegation: The El Dorado Correctional Facility failed to provide unredacted records that were responsive to the KORA request.

Action Taken: This office contacted the Kansas Department of Corrections and asked the Department to review whether the record could be released in unredacted form. After review, the Department provided the record to the requester in unredacted form. Because the records were provided and the matter was resolved informally, no further action by this office was necessary.

Contact: An inmate requested records from the Norton Correctional Facility related to a pending disciplinary case. The inmate alleged that a responsive document was not provided to him. A complaint was made to this office.

Allegation: The Norton Correctional Facility failed to provide requested records.

Action Taken: This office contacted the Kansas Department of Corrections regarding this matter. After reviewing the complaint and the Department's response, no conclusive evidence could be found that the document in question was in the Facility's possession when the response to the records request was made. Agencies are not required to provide records that are not in existence or in their possession when a request is made. Therefore, no violation was found. No further action was necessary by this office, and the matter was closed.

Kansas Highway Patrol

Contact: A request was made to the Kansas Highway Patrol (KHP) asking for information regarding training procedures and protocols for "all police agencies" and the KHP on "monitoring someone following too closely on any open road" and "stopwatch protocols for traffic violations." The KHP denied the request, asserting that the KORA does not require that a record be created to respond to a request or to answer questions asking for information. The requester believed that the requested information was public record. A complaint was made to this office.

Allegation: The KHP improperly denied the request for information.

Action Taken: Upon review, this office determined that the complainant had asked for information or answers to questions, rather than records. Further, the complainant had asked for information about "all police agencies," but the KHP does not maintain records for all police agencies. This office contacted the KHP and asked whether it had any records that might respond to the requester's questions. Even though the requester failed to ask for access to or copies of records, in a good faith effort to be responsive, the KHP searched for and provided one record, which this office forwarded to the complainant. It was determined that the KHP did not violate KORA. No further action was necessary by this office, and the matter was closed.

Kansas Public Employees Retirement System (KPERS)

Contact: A KORA request was made to KPERS for certain "Market Value" records. KPERS refused to provide the records, even though this type of record had been provided to the same requester in the past, and the agency offered no reason

why the records were now considered not to be open. A complaint was made to this office.

Allegation: KPERS improperly withheld records and did not provide a reason why the records were considered not to be open.

Action Taken: This office requested that KPERS provide a summary of the agency's actions regarding this request. KPERS advised that the records had been withheld in error because of internal disagreement about the status of the records and improper handling of the KORA request. The records were provided to the requester, and KPERS advised that it had clarified its KORA procedures to avoid any future issues. Because the requester advised KPERS that he was satisfied with the receipt of the records, and KPERS clarified its internal procedures to prevent future problems, no further action by this office was necessary and the matter was closed.

COUNTIES

No KORA complaints concerning counties were investigated by the Office of the Attorney General during the reporting period.

CITIES

City of Parsons

Contact: A citizen sent a request to the City Manager and Director of Finance for access to certain city records, but was denied access to the records. A complaint was made to this office.

Allegation: Improperly denied access to city records.

Action Taken: Although this office requested that the complainant provide additional information in order to complete investigation of his complaint, no further information was received from the complainant. This matter was closed.

OTHER PUBLIC AGENCIES

Kansas Memorial Union Corporation

Contact: A KORA request was made to the Kansas Memorial Union Corporation for records regarding a bid solicitation and contract award. The Union denied the

request, asserting it was not a public agency subject to KORA. A complaint was made to this office.

Allegation: The Union is a public agency subject to KORA and therefore, the records request was improperly denied.

Action Taken: This office asked the Union to respond to the complaint. After review, the Union determined that KORA did apply to the request, and it subsequently provided the requested records. Because the records were provided and the matter was resolved informally, no further action by this office was necessary.

Washburn University – Kansas APRN Taskforce

Contact: The Kansas Board of Nursing provided a database of names and addresses to the APRN Taskforce in response to a KORA request. The Board believed the database was used in connection with the Taskforce's fundraising efforts. A complaint was made to this office.

Allegation: The Taskforce and the Dean of the Washburn School of Nursing improperly used the database of names obtained from the Board to solicit funds, in violation of KORA.

Action Taken: The Dean acknowledged that a database obtained from the Board was used to solicit donations to support the Taskforce's lobbying efforts. However, upon review of the law, this office determined that it is not a violation of KORA to use names obtained through an open records request to solicit donations. Use of the names and contact information is only prohibited where it is used for the purpose of selling or offering for sale any services or property. It was determined that the APRN Taskforce and the Dean did not violate KORA. No further action was necessary by this office, and the matter was closed.

REFERRALS TO COUNTY OR DISTRICT ATTORNEY OFFICES

- Garden City Community College (Finney) – charging excessive fee for access to requested records. See county report for details.
- Geary County Clerk (Geary County) – not providing requested Geary County-Junction City joint commission meeting minutes. See country report for details.
- City of Ensign (Gray County) – requests for records improperly handled. (See also referral regarding alleged KOMA violations below). No information on resolution.

- Johnson County (Johnson County) – improperly applying KORA exemption to withhold requested written communications. See county report for details.
- Regional Forensic Sciences Center (Sedgwick County) – refusal to respond to request for records. See county report for details.

KOMA COMPLAINTS

STATE AGENCIES

No KOMA complaints concerning state agencies were made to the Office of the Attorney General during the reporting period.

COUNTIES

No KOMA complaints were investigated by the Office of the Attorney General during the reporting period.

CITIES

City of Augusta

Contact: The publisher of the *Augusta Daily Gazette* complained that the City Council violated KOMA by improperly holding an executive session to discuss a city contract to sell water to the City of Mulvane.

Allegation: The topic was not appropriate for an executive session and should have been discussed in an open meeting.

Action Taken: Upon investigation, it was determined that a technical violation of KOMA had occurred, because while the motion to enter executive session contained a subject matter, it did not contain a justification for the executive session and the time/place at which the open meeting was to resume; these are all required elements of a motion. The Council's formally adopted and approved minutes also did not meet the requirements of KOMA. The Council entered into a settlement agreement that required the members to obtain KOMA training and agree not to intentionally violate KOMA in the future. The Council promptly obtained the required training.

REFERRALS TO COUNTY OR DISTRICT ATTORNEY OFFICES

- Iola City Council (Allen County) – repeated failure to follow the proper procedure to enter executive sessions in violation of KOMA; concern that Council is holding meetings without giving requested notice. See county report for details.
- Ensign City Council (Gray County) – improper handling of request for meetings notifications. (See *also* referral regarding alleged KORA violations above). See county report for details.

- Erie City Council (Neosho County) – holding an improper executive session in violation of KOMA. No information on resolution.
- Haven City Council (Reno County) – conducting meetings without giving requested notice in violation of KOMA. No information on resolution.
- Salina City Commission (Saline County) – holding a special meeting that did not follow the required procedures under KOMA. No information on resolution.
- Goddard City Council (Sedgwick County) – use of executive sessions. See county report for details.
- City Council of Park City (Sedgwick County) – failing to give requested notice of a special meeting in violation of KOMA. No information on resolution.
- Stafford City Council (Stafford County) – holding an improper executive session in violation of KOMA. See county report for details.
- Woodson County Commission (Woodson County) – improper use of executive sessions and discussing matters not identified in the meeting agenda. No information on resolution.
- Yates Center City Council (Woodson County) – continuing to discuss city business after the conclusion of a meeting in violation of KOMA and attempting to find ways to meet privately to avoid the requirements of KOMA. See county report for details.