

**KOMA/KORA COMPLAINTS RECEIVED BY THE  
ATTORNEY GENERAL'S OFFICE  
REPORT PURSUANT TO K.S.A. 2016 SUPP. 75-753**

**July 1, 2015 through June 30, 2016**

**KOMA COMPLAINTS**

**STATE AGENCIES**

**Kansas Board of Regents – Emporia State University (ESU) Presidential Search Committee**

**Contact:** An individual alleged that the Committee did not provide notice of a change in meeting time. The individual contacted this office.

**Allegation:** The Committee failed to provide notice of change in meeting time in violation of the KOMA.

**Action Taken:** This office contacted the Kansas Board of Regents (KBOR), which created the Committee, for information. Upon investigation, it was determined that the Committee provided the individual notice of the time and place of its meetings as requested. Additionally, it was determined that the meeting time/place did not change. Rather, according to the information gathered during the investigation, the individual was late to the meetings as she confused the start time. The individual did not respond when offered the opportunity to clarify or refute this information. Based on this, there was no violation of the KOMA, and no further action was taken.

**CITIES**

**City of Hutchinson / Hutchinson City Council**

**Contact:** An individual alleged the city / city council improperly edited an archived recording of a city council meeting to remove the roll call, flag salute, prayer, and two (2) public comment presentations, and that the archived recording constituted an “official transcript” of the meeting that could not be altered.

**Allegation:** The city / city council improperly altered the official video transcript of meeting.

**Action Taken:** Upon review, it was determined that the city / city council did not violate the KOMA. The KOMA does not require a public body to keep meeting minutes except with regard to executive sessions. The video was posted to make the meeting transparent and accessible to the public. Because there was no violation of the KOMA, no further action was required.

## **City of Liebenthal and Liebenthal City Council**

**Contact:** An individual alleged that the city failed to comply with the requirements for entering into executive sessions, including the form of the motion and the content of the minutes. The individual also alleged that the city and the city council failed to timely respond to her KORA request directed to both entities. A contact was made to this office.

**Allegation:** The city and the city council failed to comply with the KOMA and the KORA.

**Action Taken:** This complaint was originally referred to the Rush County Attorney, however, at the request of the county attorney, this office investigated the complaint due to a conflict. Upon investigation, this office determined the city council violated the KOMA on 3 occasions by failing to comply with the procedural aspects for entering into executive session. On these occasions, the motions did not always include all the statutorily required elements for entering into an executive session. The city council also failed to properly record the motions for executive session in the meeting minutes as required. Additionally, at one meeting, the subject matter identified for the executive session was one not recognized by law. Because the city council attempted to comply with the law and also expressed its willingness to obtain KOMA training, this office determined to seek voluntary compliance through a Consent Agreement to address the pattern of mistakes with respect to executive sessions. The city council entered into a Consent Agreement and promptly complied with all its terms. *See* section under KORA concerning *Cities* for the results of the inquiry concerning allegations the city and city council violated the KORA.

## **COUNTIES**

### **Butler County Board of Commissioners**

**Contact:** An individual alleged that the Board violated the “spirit” of the KOMA when it recessed into executive session with regard to identifying the subject matter for the session. A contact was made to this office.

**Allegation:** The Board violated the KOMA with regard to executive sessions.

**Action Taken:** Upon review, it was determined that the Board properly made the motion for executive session on the occasion identified in the complaint. In particular, the board identified the subject matter, justification, and time and place the open meeting would resume. However, when the motion was recorded in the minutes, the place where the open meeting was to resume was not included. This appeared to be an oversight rather than a deliberate attempt to subvert the purposes of the KOMA, especially since the motion itself properly included all the required elements. This showed both a good faith effort to comply with the KOMA, as well as substantial compliance with the statutory requirements for entering into an

executive session. No evidence was presented that the failure to include the place the open meeting would resume in the minutes prejudiced any individual or effectively denied the public's right to know. Based on the facts presented, the failure to include in the minutes the place that the open meeting would resume was a technical violation of the KOMA. This office contacted the Board's attorney about this concern and he advised that this oversight would be addressed promptly. No further action was required.

### **Geary County and Riley County Commissions**

Contact: Geary and Riley County Commissioners engaged in a joint executive session to discuss confidential legal advice. The county counselors and county clerks of both counties were present in the session. The complainant believed that the counties could not go into executive session together, and that the presence of the county clerks for the respective counties constituted a waiver of the attorney-client privilege. A contact was made to this office.

Allegation: The Geary and Riley County Commissions violated the KOMA by holding a joint executive session for purposes of receiving legal advice and allowing their respective clerks to attend.

Action Taken: This office contacted the county counselors for Geary and Riley Counties and reviewed their joint response. After reaching factual conclusions, this office analyzed the facts under the KOMA and determined that: 1) the Riley County Commission did not violate the KOMA by conducting a meeting in Geary County; 2) the Riley County Commission violated the KOMA by failing to return to an open meeting at the conclusion of the executive session; 3) the Geary County Commission violated the KOMA by not including a subject to be discussed during the executive session and not stating the place the open meeting would resume; 4) the Riley County Commission's failure to list the names and titles of the individuals invited to the executive session did not violate the KOMA, but it is a better practice to do so; 5) the presence of the county clerks was justified because they were part of the county counselors' respective client base and they were essential to the discussion of topic that was the subject of the executive session; however, a better practice is to include the justification in the motion and record that justification in the minutes so that members of the public know why specific individuals attend executive sessions; and 6) the Riley County Commission violated the spirit of the KOMA by approving minutes that did not accurately reflect the attendees at the executive session. However, based on the investigation and the information provided, this office could not conclude that either county commission knowingly and intentionally violated the KOMA. No further action was taken.

### **Hamilton County Library Board**

Contact: A former employee of the Hamilton County Library alleged that when terminating

her, the Board failed to follow its adopted procedure for the termination of an employee, and either failed to hold an open meeting to take action concerning her employment or held a secret meeting or series of meetings where action was taken concerning her employment. A contact was made to this office.

Allegation: The Board failed to follow its adopted procedure for the termination of an employee and violated KOMA by failing to take action in an open meeting.

Action Taken: Upon investigation, this office determined that the Library Director fired the employee; the Library Director is authorized to take employment action, not the Board. The Library Director informed the Board of the termination, but the Board was not involved in making the decision to fire the employee. This office was unable to conclude that the Board was required to hold an open meeting to approve termination of employment as such action was within the purview of the Library Director. This office was also unable to conclude that the Library Board held a secret meeting or series of meetings where it took action concerning the complainant's employment. Thus, no violation of KOMA was found, and no further action was taken.

### **Lincoln County Council on Aging (LCCA)**

Contact: An individual alleged that the LCCA did not provide public notice of its meetings. She also raised concerns about the accuracy and content of meeting minutes, being asked to leave the meeting by the because of her conduct, and a summons served on her concerning a Petition for Protection from Stalking Order by a Lincoln County employee. A contact was made to this office.

Allegation: The LCCA violated the KOMA by failing to give public notice of its meetings or keep accurate meeting minutes, requiring individuals to leave a public meeting, and serving a summons for a protection from stalking order against the complainant.

Action Taken: Upon review, it was determined that the KOMA requires notice of the date, time and place of any regular or special meeting of a public agency or body be provided to any person requesting such notice. Such request is valid for one fiscal year, and the public body must notify the requester before terminating the notice. The KOMA does not require a public body to publish notice of its meetings in a newspaper, on a website, or to otherwise take steps to broadcast notice of such meetings to the public. Because the individual only complained about the lack of public notice, there was no KOMA violation. Additionally, the KOMA also does not contain any requirements concerning the content of meeting minutes, except with regard to motions to recess into executive sessions. In the absence of some applicable ordinance, by-law or other rule, the members of a public body are free to determine the content of the meeting minutes, as well as how detailed they should be. The meeting minutes provided by the individual did not reference any executive sessions, and she did not raise any concerns regarding executive sessions. Thus, there was no KOMA violation concerning the content of the meeting minutes.

Finally, based on the information provided, the individual was asked to leave a LCCA meeting because according to an Information Report completed by the Sheriff's office, she was reportedly warned "about being disruptive and disrespectful" during the meeting. Because the individual was not a member of the LCCA, she did not have the right to speak at or participate in the meeting. The public may only observe and listen to meetings of public bodies. An individual cannot interrupt or interfere with a lawful meeting. After speaking with the officer, the individual agreed to leave the meeting. Based on the facts presented, there was no violation of the KOMA. This office declined to review or take action on the individual's concerns about a summons served on her seeking a protection from stalking order by a Lincoln County employee as such concerns are outside the scope of the KOMA. In light of the foregoing, no further action was taken.

### **Scott Township Board**

Contact: An individual alleged the Board failed to provide her notice of meetings after she requested notice; she also raised concerns about executive sessions and alleged she requested, but did not receive records. A contact was made to this office.

Allegation: The Board violated the KOMA's provisions concerning notice and executive session, and violated the KORA by failing to provide copies of requested records.

Action Taken: Upon review, it was determined that the individual contacted both the Bourbon County Attorney and this office seeking assistance. After consulting with the Bourbon County Attorney's office, he advised that his office would investigate this matter. Based on this, no further action was required.

### **OTHER AGENCIES**

#### **South Central Kansas Library System Board**

Contact: An individual raised a variety of concerns related to the governance of the Board's executive committee, including that meeting minutes were inaccurate and meetings were held without public announcement. A contact was made to this office.

Allegation: The Board's executive committee violated KOMA in its governance, keeping of minutes, and meeting announcements.

Action Taken: Upon review of the complaint, it was determined that concerns about the governance of the executive committee were outside the scope of the KOMA. Following receipt of additional information from the complainant, this office determined that inaccuracies in meeting minutes, if any, were outside the scope of the KOMA as the reported inaccuracies did not concern minutes required for executive sessions. Additionally, this office determined that because the KOMA does not require the Board to publicly announce its meetings, the Board did not violate the KOMA when it did not do so; additionally, the complainant had not

asked for notice of the meetings under the provisions of the KOMA. Because there was no violation of the KOMA, no further action was taken.

### **USD 361 Board of Education – Harper/Anthony**

Contact: Four individuals alleged that the Board did not provide public notice of special meetings. A contact was made to this office.

Allegation: The Board violated the KOMA by failing to give public notice of its special meetings.

Action Taken: Upon review, it was determined that the KOMA requires notice of the date, time and place of any regular or special meeting of a public agency or body be provided to any person requesting such notice. Such request is valid for one fiscal year, and the public body must notify the requester before terminating the notice. The KOMA does not require a public body to publish notice of its meetings in a newspaper, on a website, or to otherwise take steps to broadcast notice of such meetings to the general public. Because the individuals only complained about the lack of public notice, there was no KOMA violation and no further action was taken.

### **USD 498 Board of Education – Valley Heights**

Contact: An individual alleged the Board failed to record a vote in the official meeting minutes. A contact was made to this office.

Allegation: The school board violated the KOMA by failing to record a vote in the official meeting minutes.

Action Taken: Upon review, it was determined that the Board did not violate the KOMA. The KOMA does not require a public body to keep meeting minutes except with regard to executive sessions. Based on this, there was no violation of the KOMA and no further action was required.

### **REFERRALS TO COUNTY OR DISTRICT ATTORNEY OFFICES**

- Hoyt City Council (Jackson County) – meeting outside of open meeting.
- Byers City Council (Pratt County) – failure to post change in date of city council meeting.
- Cawker City Council (Mitchell County) – violation of the KOMA.
- Sedgwick Board of County Commissioners (Sedgwick County) – holding executive sessions without stating the subject matter; reaching a binding decision in executive session. The complaint was originally made to both the Sedgwick County District Attorney’s Office and this Office; the District Attorney’s Office had already begun an investigation by the time this Office received the complaint and continued their investigation. *See* FY 2016 report

concerning counties reporting KOMA/KORA complaints for results of inquiry.

- Olathe School Board (Johnson County) – failure to provide notice of special meeting; possible serial communications. *See* FY 2016 report concerning counties reporting KOMA/KORA complaints for results of inquiry.
- Phillips County Commission (Phillips County) – improper use of executive session.
- Phillips County Commission (Phillips County) – improper use of executive session (separate complaint).
- City of Galena (Cherokee County) – alleged awarding of contract without a public meeting.
- City of Galena (Cherokee County) – failure to provide notice of city council meetings after requesting notice.

## **KORA COMPLAINTS**

### **STATE AGENCIES**

#### **Kansas Bureau of Investigation (KBI)**

Contact: An individual made a request for records from the KBI. The individual stated that at first he did not receive a response to his request. After corresponding with the KBI's freedom of information officer on multiple occasions, he still did not receive the requested records. The individual contacted this office.

Allegation: The KBI failed to timely acknowledge his request and did not provide requested records.

Action Taken: This office contacted the KBI and learned that the KBI had responded to the individual and provided the records he requested. This office advised the individual that the matter would be considered closed unless he objected. This office received no response from the individual, and therefore no further action was taken.

#### **Kansas Department for Children and Families (DCF)**

Contact: An individual requested records from the DCF concerning a case in which he was involved. The requester alleged that the DCF did not provide the requested records. The individual contacted this office.

Allegation: The DCF did not respond to records request in violation of the KORA.

Action Taken: Upon investigation, this office learned that the DCF received a verbal request for case information through the individual's case manager. The individual did not make clear his verbal request for records was made pursuant to the KORA. The DCF did provide some information and records to the individual; DCF could not

provide some information because it did not have the requested records or because the requested information is confidential by law. No further action was taken.

### **Kansas Department for Children and Families (DCF)**

Contact: An individual requested records from the DCF. The requester alleged DCF did not provide a timely response. The individual contacted this office.

Allegation: DCF did not timely respond to a records request in violation of the KORA.

Action Taken: Upon investigation, this office learned that the DCF sent a timely initial response to the KORA request. However, there was a delay in providing records; this was attributable to the fact DCF did not create or maintain some of the requested records. Despite this, DCF took the time to determine whether it could provide raw data to satisfy the request. While this complaint was pending, DCF resolved the raw data issues and sent the complainant a response, along with a request for advance payment of a fee to make the records available. The complainant paid the fee and received the records. Because this matter was resolved by providing the records, no further action was taken.

### **Kansas Department for Children and Families (DCF)**

Contact: An individual requested records from the DCF. The requester alleged DCF did not provide the records. The individual contacted this office.

Allegation: The DCF did not provide records in violation of the KORA.

Action Taken: This office requested the complainant provide further information/clarification, but received no response. No further action was taken.

### **Kansas Department of Commerce**

Contact: An individual made two requests to Commerce for documents related to the Topeka STAR Bond expansion project. The requester alleged that Commerce did not timely acknowledge his second request, did not timely provide records, and did not provide all requested records. A contact was made to this office.

Allegation: Commerce did not timely and fully respond to records requests in violation of the KORA.

Action Taken: Upon investigation, this office learned that Commerce had understood requester's second request to be a continuation of his first request, and thus did not provide a second acknowledgement, and that Commerce had provided certain documents to requester. The requester advised this office that Commerce had not provided all requested records, which apparently referred to the city's application for STAR bond expansion and related documents. This office requested a response from



Commerce to the complaint. Commerce asserted that the application and related documents were preliminary drafts/unfunded proposals not required to be disclosed under the KORA. Requester followed up with this office, which made an additional inquiry to Commerce. Commerce advised that it had provided the additional requested documents, which were closed at the time of the initial requests but were now open because the city had withdrawn its application. This office determined that Commerce's actions were reasonable and that Commerce had not knowingly violated the KORA. Commerce's response to requester's original request was provided within three business days, and the records that were withheld were not required to be disclosed under the KORA. No further action was taken.

### **Kansas Department of Corrections (KDOC) / Lansing Correctional Facility (LCF)**

Contact: An inmate made 3 requests for records from a correctional facility, which denied or took no action on his requests. The inmate believed the denial of access to records and failure to act was improper. A contact was made to this office.

Allegation: KDOC/LCF denied access to records in violation of the KORA.

Action Taken: This office reviewed the allegations, and determined that the inmate asked prison officials for answers to questions and not for records. The KORA requires a public agency to provide access to or copies of records. It does not require a public agency to answer questions seeking information. Because the individual was merely asking questions and not for access to or copies of records, there was no violation of the KORA. To the extent that the inmate's request could be interpreted as a request for records, prison officials denied the inmate access to the records based on K.S.A. 2015 Supp. 45-221(a)(29)(A) and caselaw because he could not show he was entitled to access the records he requested. The inmate also asked prison officials to safeguard certain videos from a use of force incident for use in pending or planned litigation. Notably, however, the inmate did not request copies of the records. Finally, in reference to a particular situation, the inmate asked that prison officials "pass that on for the record." Again, the inmate did not request access to or copies of any records. Because this office did not find a violation of the KORA in these instances, no further action was taken.

### **Kansas Department of Health and Environment (KDHE)**

Contact: An individual requested the KDHE provide records associated with a complaint he filed with KDHE. The individual contacted this office when he did not receive a response from KDHE.

Allegations: The KDHE failed to respond to a request for records in violation of the KORA.

Action Taken: This office contacted the KDHE concerning the status of the individual's request. Following contact from this office, KDHE discovered the individual's request was twice misdirected to an employee with the same name at a different agency. The

KDHE located the records, requested advance payment of a fee, and provided the individual with copies of the records after payment of fee. KDHE also adopted additional procedures to prevent such situations from occurring in the future. Finally, KDHE sent the individual an apology for the misdirected KORA request. This office advised the individual of this information and requested the individual contact this office if he was not satisfied with the outcome. This office received no further contact from the individual, thus the file was closed and no further action was taken.

### **Kansas Highway Patrol (KHP)**

Contact: Several individuals requested records from the KHP concerning certain KHP policies and procedures and training. The individuals claimed that KHP refused to provide requested records, failed to provide a justification for refusing to provide records, and/or failed to respond to a request in a timely manner. Contacts were made to this office.

Allegations: The KHP refused to provide requested records, failed to provide a justification for refusing to provide records, and/or failed to respond to a request in a timely manner, in violation of the KORA.

Action Taken: The KORA does not require agencies to create or acquire records it does not already have at the time of the request. It also establishes exemptions to disclosure of public records. This office reviewed the request and responses from the KHP. This office then contacted KHP to determine if there were any records that could be released in whole or in part. KHP agreed to release certain records to the requesters in whole and certain records in part and to provide certain other requested information. No further action was taken.

### **Kansas Highway Patrol (KHP)**

Contact: An individual requested the KHP provide records concerning any instance where KHP officer action resulted in death since January 1, 2004. The KHP denied the request. The individual requested the KHP reconsider and the KHP advised it would. The individual contacted this office when the KHP did not provide a further response.

Allegations: The KHP refused to provide requested records and/or failed to respond to a request in a timely manner, in violation of the KORA.

Action Taken: This office contacted the KHP concerning the individual's request. Although there was a delay, the KHP did respond and provided a cost estimate to access the records. This office contacted the individual to determine if the KHP's response was satisfactory. Although the individual was not completely satisfied, he requested this office close the complaint. No further action was taken.

### **Kansas Insurance Department (KID)**

**Contact:** An individual applied for a Kansas insurance agent license from the KID in 2012 and was denied in part due to past criminal convictions. The KID then issued the individual a license for a probationary period. The individual later had his convictions expunged. The individual became aware that the KID orders discussing his past convictions were still available on the KID website, and the KID refused to remove them. A contact was made to this office.

**Allegation:** The KID improperly refused to remove documents discussing the complainant's past criminal convictions, even after the convictions had been expunged.

**Action Taken:** This office noted that the KORA establishes procedures for requesting access to or copies of public records. It does not establish procedures for determining which records may be posted on a state agency's website. Thus, this office determined that the complaint did not involve the KORA. Accordingly, no further action was taken.

### **Kansas Department of Labor (KDOL)**

**Contact:** An individual filed an unemployment compensation claim with the KDOL. The individual complained that every time he filed a document in connection with the claim, he was asked to submit additional information, and his claim was denied. A contact was made to this office.

**Allegation:** The Kansas Department of Labor handled the complainant's unemployment compensation claim improperly.

**Action Taken:** This office advised the complainant that his complaint did not fall under the KORA. The complainant was referred to the KDOL's Unemployment Contact Center.

### **Kansas Department of Revenue (KDOR)**

**Contact:** A couple made a telephonic request for copies of medical documentation from the KDOR on a case involving their son. The request was denied the same day. A contact was made to this office.

**Allegation:** The KDOR improperly denied a records request in violation of the KORA.

**Action Taken:** Upon investigation, the KDOR advised the requesters did not make a written request as required by its KORA policy then in existence. The KDOR further stated the requesters actually requested the records of third parties with a similar medical condition and not their son's records. The KDOR advised the requested records are confidential under federal law and thus are exempted from disclosure under the KORA. The KDOR also advised the requesters how to request medical records. Because KDOR's response to the verbal request for records was consistent with the

KORA, no further action was taken.

### **Kansas State University (KSU)**

Contact: An individual requested records from KSU that were formerly in his office. KSU provided some records and declined to provide some records based on an exemption to KORA concerning notes, drafts, research data in the process of analysis and opinions. A contact was made to this office

Allegations: KSU improperly refused to provide requested records in violation of the KORA.

Action Taken: Upon investigation, KSU advised that some responsive records were released in a redacted form. KSU declined to release the remainder of the records based on an exception to disclosure concerning note, opinions, and recommendations. Because KSU's response complied with the KORA, no further action was taken.

### **The University of Kansas (KU) and University of Kansas Endowment Association (KUEA)**

Contact: An individual made a written request to the KUEA for a comprehensive list of the specific companies, organizations, etc., in which KU and the KUEA invest monies. After KUEA denied the request for records, the requester contacted this office.

Allegation: KU and KUEA improperly denied a records request in violation of the KORA.

Action Taken: Upon investigation, KU advised that it was unaware the request for records until notified by this office of the complaint. Independent review of the request by this office revealed that the requester only sent his records request to the KUEA and not to KU. Because of this, KU did not violate the KORA and no further action was taken. *See* section concerning *Other Agencies* for the results of the inquiry concerning the KUEA.

### **Wichita State University (WSU)**

Contact: An individual made written requests to WSU for records. According to the individual, WSU refused to provide the requested records in response to one KORA request, and in response to a second KORA request, failed to provide a cost estimate or the records in a timely manner. The individual contacted this office.

Allegation: WSU improperly denied access to records in violation of the KORA.

Action Taken: While this matter was under investigation by this office, the individual filed a lawsuit raising the same claims as made in his KORA complaint. Because of this, the investigation was closed and no further action was taken by this office.

## **CITIES**

### **City of Caney**

Contact: An individual requested records from the city. She received the records but believed the fees for making the records available were excessive. A contact was made to this office.

Allegation: The city charged excessive fees for copies of records in violation of the KORA.

Action Taken: This office requested the complainant provide further information/clarification, but received no response. No further action was taken.

### **City of Hoyt**

Contact: An individual requested copies of various documents from the city. She alleged that the city failed to respond within 3 days of her request, did not provide all requested records, and charged excessive fees for providing the records. A contact was made to this office.

Allegation: The city did not respond within 3 business days as required; failed to deliver the records or provide an estimate as to when the records would be available, and charged excessive fees in violation of the KORA.

Action Taken: Upon investigation, this office determined that the city committed technical violations of the KORA by not acting upon the KORA request within 3 business days and by assessing unreasonable fees, including for time spent searching for documents that could have been obtained by contacting other sources. This office did not find that either violation was committed knowingly. Prior to the request, the city did not have a KORA request form; there were no procedures in place for responding to a KORA request; and the city clerk was not trained on responding to KORA requests. However, since the request, the city has implemented a KORA request form and passed an ordinance designating a freedom of information officer, outlining the responsibilities of the city clerk and city attorney in responding to KORA requests, and establishing fees for responding to KORA requests. In addition, this office discussed its concerns with the city attorney, who agreed to refund the partial payment the complainant made and provide KORA training for the city clerk. Because this office did not find a knowing violation of the KORA, and the complainant was satisfied with city's remedial measures, no further action was taken.

### **City of Leawood Police Department**

Contact: An individual requested a record from the police department, but alleged he did not receive the record. A contact was made to this office.

Allegation: The police department violated the KORA by failing to respond to a request for

records.

Action Taken: This office requested the complainant provide further information/clarification, but received no response. No further action was taken.

### **City of Liebenthal and Liebenthal City Council**

Contact: An individual alleged the city council failed to comply with the requirements for entering into executive sessions, including the form of the motion and the content of the minutes. The individual also alleged that the city and the city council failed to timely respond to her KORA request, which as directed to both entities and related to her KOMA concerns. A contact was made to this office.

Allegation: The city and the city council failed to comply with the KOMA and the KORA.

Action Taken: This complaint was originally referred to the Rush County Attorney, however, at the request of the county attorney, this office investigated the complaint due to a conflict. Upon investigation, this office determined the city and city council violated the KORA by failing to respond to a KORA request within 3 business days, although a delayed response was provided. The city also failed to comply with the KORA's procedural aspects, including adopting procedures for the public to follow in making KORA requests; designating a local freedom of information officer; and making available a brochure describing a requester's rights, the city's responsibilities, and the procedures for making KORA requests. The city, which did not maintain regular office hours, also failed to establish reasonable hours for when the public could make KORA requests. Staff resignations in the position responsible for responding to KORA requests and disorganized city records hampered the city's efforts to timely comply with the KORA. Because the city council attempted to comply with the law and also expressed its willingness to obtain KORA training, this office determined to seek voluntary compliance through a Consent Agreement. Because the city council attempted to comply with the law and also expressed its willingness to obtain KOMA training, this office determined to seek voluntary compliance through a Consent Agreement to address failure to comply with the procedural aspects of the KORA. The city and the city council entered into a Consent Agreement and promptly complied with all its terms. See section under KOMA concerning *Cities* for the results of the inquiry concerning allegations the city and city council violated the KOMA.

### **City of Parsons**

Contact: An individual requested records from the city, but did not receive the records or a detailed explanation for the delay within 3 business days, and no one could provide information on the status of her request. The individual alleged this also happened on previous occasions. A contact was made to this office.

Allegation: The city failed to respond to a records request on a timely basis in violation of the

KORA.

Action Taken: This office contacted the complainant to request further information and supporting documentation, including a copy of the records request. The complainant did not provide a response, so no further action was taken.

### **City of Salina**

Contact: An individual requested records from the Secretary of State concerning a charter ordinance and discovered that the ordinance was not filed. A contact was made to this office.

Allegation: The city failed to file copies of charter ordinances with the Secretary of State's office as required.

Action Taken: Upon investigation, this office determined that the Secretary of State's office responded as required by the KORA. A public agency cannot provide records it does not have, thus there is no violation of the KORA. Additionally, the KORA does not have any provisions concerning the failure to file copies of a charter ordinance after it becomes effective. Because there was no violation, no further action was taken.

### **City of Topeka Police Department (TPD)**

Contact: An individual's records request to the TPD was denied. The individual sent a revised request, but alleged he did not receive a written response to his revised request. A contact was made to this office.

Allegation: The TPD violated the KORA by failing to respond to a request for records.

Action Taken: This office contacted the Interim City Attorney for Topeka regarding the complaint. Both the city attorney and the complainant advised this office that the city had subsequently provided the requested records to the complainant. No further action was taken.

## **COUNTIES**

### **Butler County District Court (Judge) and Johnson County District Court (Clerk)**

Contact: An individual requested records from a judge and then separately requested a district court clerk answer questions under the KORA and did not receive a response. A contact was made to this office.

Allegation: The judge and the district court clerk failed to respond to records requests in violation of the KORA.

Action Taken: This office reviewed the allegations, and determined that because a judge is not a public agency within the meaning of the KORA, there was no violation. This office also determined that the individual asked the district court clerk for answers to questions and not for records. The KORA requires a public agency to provide access to or copies of records, but does not require a public agency to answer questions seeking information. Because the individual was merely asking questions and not for access to or copies of records, there was no violation of the KORA. In order to assist the individual, this office located the answers to the questions asked by the individual and provided him with the information. Because this office did not find a violation of the KORA in either instance, no further action was taken.

### **Ellis County Sheriff's Office**

Contact: An individual requested records from the city, but claimed the sheriff's office denied his request(s). A contact was made to this office.

Allegation: The sheriff's office denied records requests in violation of the KORA.

Action Taken: This office requested the complainant provide further information/clarification, but received no response. No further action was taken.

### **Franklin County**

Contact: An individual requested Franklin County provide copies of incident reports from dispatch concerning for three (3) incidents of self-harm that occurred in November 2015. The county denied the individual's request citing a KORA provision concerning a clearly unwarranted invasion of personal privacy. The individual believed such records should be open because in 2011 the County released similar records about the individual to a newspaper reporter and to the individual while holding a position as an elected official. A contact was made to this office.

Allegation: Franklin County improperly denied access to the requested records.

Action Taken: This office contacted the Franklin County Counselor, who advised that access to the requested records was denied because the records, titled Call Sheet Reports, concerned suicide or self-harm attempts. The county relied on a KORA exemption to disclosure for "public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." The county counselor advised the records contained medical and injury details, none of the individuals involved were public officials, and that he believed the release of the records would constitute a violation of privacy rights because the records contained "highly personal and highly sensitive information." After a review of the facts, it was clear the records contained information of a personal nature, and that releasing specific details about a private individual's attempt at self-harm would do little to advance the KORA's purpose of ensuring



public confidence in government by increasing the public's access to their government and its decision-making process. Additionally, the individual making the request did not provide any information to show or establish the information was of legitimate public concern, notwithstanding the fact that similar information was previously released about the individual. Because Franklin County properly relied on an exemption to disclosure in the KORA, there was no violation. However, because it was unclear whether consideration had been given to providing redacted copies of the records to the individual, this office requested Franklin County again review the records. Following their review, the county provided redacted copies of the records to the individual. No further action was taken.

### **Labette County Clerk's Office**

Contact: An individual requested records from the clerk's office, but alleged the records were not provided. A contact was made to this office.

Allegation: The clerk's office violated the KORA by failing to respond to a request for records.

Action Taken: This office requested the complainant provide further information/clarification, but received no response. No further action was taken.

### **Riley County Attorney's Office**

Contact: An individual asked the county attorney to provide the number of property crimes prosecuted in 2014. The county attorney provided the individual with information; the individual did not believe the response was timely or complete. A contact was made to this office.

Allegation: The county attorney's Office failed to respond to a KORA request in a timely manner and did not provide requested information.

Action Taken: Upon investigation, the county attorney advised that when he first received the individual's email asking for information, he advised the individual he was preparing for a murder trial and would respond after the trial concluded. The county attorney later met with the individual, and advised that his office did not compile information responsive to the questions or maintain it in a format that would be responsive to the questions asked. Nevertheless, the county attorney directed his staff to review an electronic database that did exist and create a document with information on the requested subject matter; the county attorney also waived the cost of staff time to compile this specially created document. Upon review of the email correspondence submitted by the individual to support his complaint, this office was unable to identify a request for records that triggered the provisions of the KORA. The email correspondence asked questions; the emails also asked for information. This office determined the county attorney did not violate the KORA because there was no clear KORA request; additionally, he had his staff created a

document with the requested information, which was not required by the KORA. No further action was taken.

### **Shawnee County District Court (Judge)**

Contact: An individual filed a complaint describing a series of events in a contested custody/support/visitation case, and checked the box on the form stating the type of violation as “KORA.” The individual believed the judge’s actions were improper and requested the judge’s recusal and the transfer of his case to another jurisdiction.

Allegation: Dissatisfaction with judicial rulings issued in a custody/support/visitation case.

Action Taken: This office reviewed the allegations, and determined that they did not state any violation of the KORA. Additionally, a judge is not a public agency within the meaning of the KORA. No further action was taken.

### **Stevens County Sheriff’s Office**

Contact: A newspaper requested access to a vehicle accident report from the Stevens County Sheriff’s Office, both verbally over the phone and in person, and in writing. The newspaper indicated it did not receive a response, and that it believed the sheriff improperly refused the request. The newspaper contacted this office.

Allegation: The sheriff’s office failed to respond to the KORA request and improperly refused access to a requested document in violation of the KORA.

Action Taken: Upon investigation, the sheriff’s office advised the accident investigation was still pending at the time of the KORA request, and thus the report was incomplete. The sheriff noted that he believed a press release his office issued the same day as the initial request included the requested information. This office found that the response to the request was generally consistent with the KORA, which applies to public records that are in existence at the time of the records request. A public agency is not required to create a record in order to respond to a request for records or information. Further, the KORA does not require a public agency to disclose “[n]otes [or] preliminary drafts.” Because the written records request from the newspaper was not dated, this office was not able to determine if the sheriff’s office complied with the requirement to respond within 3 business days by either granting access to requested records, or providing a detailed explanation for any delay. The press release issued by the sheriff’s office on the same day the first request for records was made was intended to serve as a timely response to the request. Because this office did not find a knowing violation of the KORA, no further action was taken.

### **Stevens County Sheriff’s Office**

Contact: A newspaper made a KORA request to the sheriff's office seeking access to a vehicle accident report. The newspaper indicated the sheriff's office refused to release the records and offered no explanation as to why. A contact was made to this office.

Allegation: The sheriff's office failed to respond to a request for records in violation of the KORA.

Action Taken: Upon investigation, the sheriff provided confirmation that he responded to the newspaper's KORA request on the same day it was received by faxing the records to the newspaper's newsroom fax machine. At the request of this office, the sheriff re-faxed the records to the newspaper. Because the records were provided in compliance with the KORA, no further action was taken.

### **Sumner County Appraiser's Office**

Contact: A real estate appraiser requested access to real estate records, but was not allowed to access property information of a public official who apparently met the KORA criteria for exempting information from public release, and was not provided with a redacted copy of the information. A contact was made to this office.

Allegation: The appraiser's office did not provide redacted copies of public records.

Action Taken: This office requested the complainant provide further information/clarification, but received no response. No further action was taken.

### **Unified Government / Wyandotte County / Board of Public Utilities**

Contact: An individual made KORA requests in 2010 and 2015 to the Board of Public Utilities (BPU) and Unified Government (UG), but claimed she did not receive a response. A contact was made to this office.

Allegation: The UG and BPU failed to respond to requests for records in violation of the KORA.

Action Taken: Upon investigation, the UG Legal Department provided information showing the BPU's response to the 2010 KORA request. It further advised the Legal Department had no record of the 2015 request until this office forwarded it to them; upon receipt, they responded promptly. The Legal Department advised there was also a 2016 KORA request from complainant that was similar to the 2010 request; the UG also had difficulty corresponding with complainant due to an outdated email address. Once it received a current email address, the UG promptly responded to the complainant's request. Because the complainant received the records she requested, this office took no further action.

## **OTHER AGENCIES**

### **Country Village Townhomes Management Association**

**Contact:** An individual requested information from a homeowners association and was unsuccessful. A contact was made to this office.

**Allegation:** Homeowners association failed to respond to information request(s).

**Action Taken:** Upon review, this office determined a homeowners association is not a public agency as defined by the KORA. This office provided complainant information on common interest communities. No further action was taken.

### **Gusenius Law Office**

**Contact:** An individual requested, but did not received records from a private law office/attorney who also acted as a prosecutor and a municipal court judge. A contact was made to this office.

**Allegation:** Private law office/attorney did not respond to request for records.

**Action Taken:** This office requested the complainant provide further information/clarification, but received no response. No further action was taken.

### **Irwin Army Community Hospital**

**Contact:** An individual requesting his medical records from Irwin Army Community Hospital did not receive the requested records. A contact was made to this office.

**Allegation:** Hospital failed to respond to records request.

**Action Taken:** Upon review, this office determined that an army hospital is not a public agency as defined by the KORA. No further action was taken.

### **Spirit Aerosystems**

**Contact:** An individual who was involved in litigation with Spirit Aerosystems believed that Spirit or some other party altered pleadings and other documents related to the litigation, causing the individual to lose. A contact was made to this office.

**Allegation:** Documents were altered in violation of the law.

**Action Taken:** Upon review, this office determined that Spirit Aerosystems is not a public agency as defined by the KORA. No further action was taken.

### **The University of Kansas (KU) and University of Kansas Endowment Association (KUEA)**

Contact: An individual made a written request to the KUEA for a comprehensive list of the specific companies, organizations, etc., in which KU and the KUEA invest monies. After KUEA denied the request for records, the individual contacted this office.

Allegation: KU and KUEA improperly denied access to records in violation of the KORA.

Action Taken: Upon investigation, it was determined that the KUEA, a not-for-profit entity, was not a public body or agency as defined by the KORA because it was not created by law or administrative decree, did not exercise the powers of government, and did not report to or recommend action to any state agency. Moreover, neither KU nor any other state agency has the authority to direct the KUEA's business activities. However, the KUEA agreed it was subject to the KORA's recordkeeping requirements for not-for-profit entities that receive public funds in excess of \$350 per year, and explained how it had complied with the statutory requirements. Based on this, the KUEA did not violate the KORA and no further action was taken. *See* section concerning *State Agencies* for the results of the inquiry concerning KU.

### **Watkins Dental**

Contact: An individual requested the dental office provide his son's medical records, but did not receive the requested records. A contact was made to this office.

Allegation: Dental office failed to respond to records request.

Action Taken: Upon investigation it was determined that Watkins Dental is not a public agency as defined by the KORA. No further action was taken.

### **REFERRALS TO COUNTY OR DISTRICT ATTORNEY OFFICES**

- City of Redfield (Bourbon County) – City Clerk refused to provide City's tax ID number so that complainant could apply for a grant on the City's behalf.
- Garland Fire District #2 (Bourbon County) – Fire district refused to allow Drywood Township Trustees to see the books for the fire district.
- City of Lawrence (Douglas County) – failure to have a KORA process or form; failure to appoint a freedom of information officer; failure to provide requested records.
- City of Westwood (Johnson County) – failure to provide incident report and the report filed with the District Attorney.
- Byers City Council (Pratt County) – failure to provide records when requested.
- Wichita Police Department (Sedgwick County) – failure to provide requested records.
- Attorney General's Office (Shawnee County) – failure to provide requested records. *See*

FY 2016 report concerning counties reporting KOMA/KORA complaints for results of inquiry.

- Leavenworth County Sheriff's Office (Leavenworth County) – failure to provide requested records.
- City of Galena (Cherokee County) – failure to provide requested records.