


**Kansas Attorney General
Derek Schmidt**

Introduction to the Kansas Open Meetings Act (KOMA)


Lisa Mendoza
Assistant Attorney General
LOGIC Division



Kansas Open Meetings Act

A history of open meetings


County Commissioners “shall sit with open doors, and all persons conducting in an orderly manner may attend their meetings.”
K.S.A. 19-218 was first adopted in 1868.



Kansas Open Meetings Act

KOMA enacted in 1972


KOMA provides the rules that allow members of the public to observe the nearly 4,000 units of government in Kansas making decisions.



Kansas Open Meetings Act

Purpose and construction


The public policy of Kansas is that meetings be open to the public because “a representative government is dependent upon an informed electorate...”



Kansas Open Meetings Act

Purpose and construction

When courts consider KOMA cases, KOMA is to be construed liberally and exceptions applied narrowly.



Kansas Open Meetings Act

Who is subject to KOMA?

All legislative and administrative bodies, agencies of the state, political and taxing subdivisions and subordinate groups that receive or expend public funds.



Kansas Open Meetings Act

Who is subject to KOMA?

Subordinate groups are not defined in KOMA. The two types most likely to be subject to KOMA:

1. those created by a covered entity
2. those that have become an extension of a covered entity



Kansas Open Meetings Act

Who is not subject to KOMA?

- An otherwise covered entity when exercising a "quasi-judicial" function
- Hearings conducted under the Kansas Administrative Procedures Act (KAPA).
- Judiciary
- Private organizations
- Staff meetings of a covered entity



Kansas Open Meetings Act

What is a meeting?

- A gathering or assembly in person, through the use of a telephone, or any other medium for interactive communication
- By a majority of the membership of an agency or body subject to this act
- For the purpose of discussing the business or affairs of the body or agency



Kansas Open Meetings Act

Serial communications – discussion outside of a noticed meeting

Interactive communications that collectively involve a majority of the membership, share a common topic of discussion, and are intended to reach an agreement on a matter that requires binding action of the agency or body.



Kansas Open Meetings Act

Meetings require notice


Notice is providing the date, time and location of where the agency or body will meet.



Kansas Open Meetings Act

Notice


- There are no formalities to request notice
- A request is valid for one fiscal year
- There is no requirement to create an agenda, but if one exists it must be made available to everyone



Kansas Open Meetings Act

Meeting conduct


- KOMA does not address meeting procedures
- The public may record a meeting as long as it does not disrupt the proceedings
- There is no right to speak, but only to listen and observe



Kansas Open Meetings Act

Executive sessions

- An open meeting must be convened first
- No binding actions may be taken in an executive session, but a consensus is allowed
- If a consensus is achieved, an open and formal vote must be taken in open session




Kansas Open Meetings Act

Executive sessions

The required actions:

- ✓ A formal motion, seconded and carried in the minutes
- ✓ Parts of the motion:
 - ✓ Justification for closure (specific)
 - ✓ Subject Matter (from the statute)
 - ✓ Time and place of resumption of the open meeting




Kansas Open Meetings Act

Executive sessions

Subject matter allowed:

- Personnel matters of non-elected personnel
- To protect the privacy interests of the employee
- Non-elected employees only, not contractors or appointments to boards or commissions
- May discuss applicants for employment




Kansas Open Meetings Act

Executive sessions

Subject matter allowed:

Consultation with your attorney

- The attorney must be present
- The communication must be privileged
- No third parties may be present (breaks privilege)



Kansas Open Meetings Act

Executive sessions

Subject matter allowed:

Employee-Employer negotiations

- For the purpose of formal negotiations – not general employee meetings or discussions
- School boards have special rules




Kansas Open Meetings Act

Executive sessions

Subject matter allowed:

Confidential data relating to the financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorship

- The economic development exception, but make sure that the data being reviewed is confidential or a trade secret




Kansas Open Meetings Act

Executive sessions

Subject matter allowed:

Matters affecting a student, patient or resident of a public institution.

- With this subject, any hearing must be open if requested by the person involved




Kansas Open Meetings Act

Executive sessions

Subject matter allowed:

Preliminary discussions relating to the acquisition of real property

- Acquisition only - not sale
- Remember - no binding action in executive sessions




Kansas Open Meetings Act

Executive sessions

Subject matter allowed:

Security Measures


- Open discussion would jeopardize security measures that protect infrastructure and the public; includes intelligence information, tactical plans, resource deployment and vulnerability assessments



Kansas Open Meetings Act

Enforcement


- KOMA is a civil statute – not criminal
- A citizen, county attorney or the attorney general may bring an action in district court
- The county attorney and attorney general may issue subpoenas



Kansas Open Meetings Act

Remedies for violations


- Voiding action taken
- Injunction (stopping action)
- Mandamus (forcing action)
- Declaratory judgment



Kansas Open Meetings Act


Penalties for violations

- Fines up to \$500 per person
- Can be grounds for ouster from office
- Potential grounds for recall from office




KOMA/KORA

Open Meetings Act panel discussion with Kansas Sunshine Coalition



Kansas Open Records Act


Introduction to the Kansas Open Records Act (KORA)



Kansas Open Records Act

KORA enacted in 1984


KORA provides the procedure for the public to view and make copies of governmental records. It also defines and categorizes records.



Kansas Open Records Act

Purpose and construction

It is the public policy of Kansas that “public records shall be open for inspection by any person unless otherwise provided, and this act shall be liberally construed and applied to promote such policy.”



Kansas Open Records Act

Who is subject to KORA?

Public agencies include the state, political or taxing subdivisions or any office or officer, agency or instrumentality, that receives or expends public funds.



Kansas Open Records Act

Who is subject to KORA?

Instrumentality is not defined in KORA

The two types most likely to be subject to KORA:

1. those created by a covered entity
2. those that have become an extension of a covered entity



Kansas Open Records Act

Who is not subject to KORA?

- Private companies, even if they receive public funds in exchange for goods and services
- Judges and courts
- An individual legislator or member of a governing body
- Private individuals



Kansas Open Records Act

Applying KORA to a request

KORA is, in part, a procedural statute and might best be illustrated by reviewing the sequence of actions that should take place once a record request has been made.



Kansas Open Records Act

Before a request is made

- The public agency must appoint a freedom of information officer to assist with KORA requests
- The public agency must have a brochure available outlining the KORA process and the requester's rights to records
- The name and title of the records custodian, fees and office hours should be available for anyone making a request
- All requests must be treated the same



Kansas Open Records Act

Who may make a request

- Any person may make a request
- The person need not be a resident
- The person need not provide a reason for their request



Kansas Open Records Act

Form of the request

The public agency:

- May require the request to be in writing
- May require requester's name and address only
- May require proof of identification
- May require written certification that the requester will not use names and addresses obtained to solicit sales or services



Kansas Open Records Act

Rights of the requester

- Unless closed by law, the public has the right to review all public records
- Anyone may make an abstract or request copies of a record
- If copies cannot be made where the record is located, arrangements must be made to allow copying
- If portions of a record are closed, the remainder must be made available to the requester



Kansas Open Records Act

Limitations on the requester's rights

- A requester may not remove a public record without the written consent of the custodian
- An agency is not required to make copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations unless shown at a public meeting. Copyrighted materials may not be reproduced without the permission from the copyright holder. These items must be available for viewing or listening.



Kansas Open Records Act

Responding to the request

The request must be "acted upon" within three business days.

The three acceptable responses:

1. The record is provided
2. The request is under review and the records, if permitted, will follow
3. The request is denied with a detailed explanation for the denial



Kansas Open Records Act

Allowable fees and charges

- Agencies may only recover their costs to provide the requested records
- These costs include staff time to retrieve, review and redact information from a record
- Fees may be estimated and collected before the records are provided



Kansas Open Records Act

Public records defined

- Public records are defined as "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency..."
- This includes written records and photographs, computer data and email



Kansas Open Records Act

Excluded records

- Private records which are owned by a private person or entity and are not related to functions, activities, programs or operations funded by public funds
- Records that do not exist at the time of the request
- Records that must be created in order to fulfill a request



Kansas Open Records Act

Categorizing records

All public records may be categorized as follows:

- Records that are open without restriction
- Records that may be closed at the discretion of the official record custodian
- Records that are closed by statute or other rule



Kansas Open Records Act

Records open without restriction

- The preliminary assumption is that a record falls within this category
- Prior to releasing a record, it is important to determine if it falls within another category



Kansas Open Records Act

Records that are discretionally closed

There are many types of records that may be closed. The three policy reasons reason records may be closed may be classified as follows:

1. personal privacy
2. security
3. internal communications while policies are developed or administrative procedures are underway



Kansas Open Records Act

Closure based upon personal privacy

A public employee's personnel file.

Except we may not close:

- Names of employees
- Positions/Titles
- Salaries or actual employment contracts, including employment related contracts or agreements
- Length of service



Kansas Open Records Act

Closure based upon personal privacy

- Medical and treatment records
- Student records
- Records containing personal information that, if released, would "constitute a clearly unwarranted invasion of personal privacy"



Kansas Open Records Act

Closure based upon security

- Records that would reveal the identity of an undercover agent or informant
- Criminal investigation records
- Records concerning emergency or security information or procedures
- Records that would reveal the location of a safe house or shelter for abused persons or the name, address, location or other contact information of alleged victims of stalking, domestic violence or sexual assault



Kansas Open Records Act

Closure based upon internal communications or procedures

- Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed
- EXCEPT if any of the above are identified or cited at a public meeting or listed on the agenda
- Attorney work product



Kansas Open Records Act

Closure based upon internal communications or procedures

- Records that are privileged under the rules of evidence, unless the holder of privilege consents to the disclosure
- Records of an investigation conducted under civil litigation or administrative adjudication, if disclosure interferes with the procedure
- Correspondence between a public agency and a private individual, unless intended to give notice of an agency action, policy or determination
- Engineering estimates, evaluations and appraisals prior to property acquisition, bid specifications and bids



Kansas Open Records Act

Records that are closed

There are over 300 types of records that are required to be closed by statute and not listed in KORA. KORA will look to other statutes first. The record custodian must be familiar with those records and what must be separated into the open and closed portions of a record.



Kansas Open Records Act

Enforcement

- KORA is a civil statute – not criminal
- A citizen, county attorney, or the attorney general may bring an action in the district court where the records are located



Kansas Open Records Act

Penalties for violations

- Fines – up to \$500 if the action is brought by the attorney general or local county or district attorney
- Attorney's fees may be granted if the agency's denial is determined to be without a good faith reason



KOMA/KORA

Thank you!

Additional resources:

www.ksag.org

Complete KOMA/KORA Outlines