

**KOMA/KORA COMPLAINTS RECEIVED BY THE
OFFICE OF THE ATTORNEY GENERAL
ANNUAL REPORT PURSUANT TO K.S.A. 2015 SUPP. 75-753**

July 1, 2014 through June 30, 2015

KORA COMPLAINTS

STATE AGENCIES

**Kansas Department for Aging and Disability Services/
Kansas Department for Children and Families**

Contact: An individual requested names and death dates for patients buried at the Osawatomie State Hospital (OSH) from the Kansas Department for Children and Families. The requester believed that the fees the Department proposed to charge for fulfilling the request were unreasonable and were intended to hinder access to the records. A contact was made to this office.

Allegation: The Kansas Department for Children and Families (DCF) requested unreasonable fees for providing requested records.

Action Taken: It was noted that the OSH is now part of the Kansas Department for Aging and Disability Services (KDADS). This office corresponded with both DCF and KDADS regarding the request. Both Departments advised that there are no electronic records of deaths prior to 1985. Prior to 1985, death information was maintained on patient record cards, which also contain psychiatric and medical information. These records date back to 1866. The cards are not separated by location of death. Thus, personnel would be required to review some 25,000 cards to locate and transcribe information responsive to the request. Additionally, special research would be required to ensure compliance with applicable state and federal laws. Based on a comparison of the fees DCF requested to fees established by other Kansas public agencies, this office could not conclude that the requested fees were unreasonable. Therefore, this office could not conclude there was a knowing or intentional KORA violation, and no further action was taken.

Kansas Department for Children and Families

Contact: An individual requested access to records from the Department concerning an investigation it conducted into allegations against the requester, including a copy of the investigative report. The Department declined to provide the records and indicated that there was not a specific investigative report that was released to persons against whom a report was made. The Department noted that the requester should have received a Notice of the Department Findings.

Allegation: The Kansas Department for Children and Families improperly declined to provide requested records.

Action Taken: This office contacted counsel for the Department. The Department responded that no specific investigative report exists which may be released to a person against whom a report was made. The Department also stated that it is restricted from releasing the reporter's name pursuant to K.S.A. 2013 Supp. 38-2212. This office independently reviewed the cited statute and conducted further research. Pursuant to K.S.A. 2013 Supp. 38-2209, child in need of care records or reports are confidential unless a specific exception applies. This office found that none of the exceptions applied to the requester's situation, and that the Department's response to the request was consistent with KORA, which does not require a public agency to disclose records "the disclosure of which is specifically prohibited or restricted by . . . state statute." Therefore, no further action was taken by this office.

Kansas Department for Children and Families

Contact: An individual requested access to the results of an investigation being conducted concerning a certain organization. The Department declined to produce the records based on the KORA exceptions for drafts and materials subject to attorney-client privilege. A contact was made to this office

Allegation: The Kansas Department for Children and Families improperly refused to provide requested records, in violation of the KORA.

Action Taken: Upon investigation, it was learned that the Department's investigation was not complete at the time the request was made. The KORA permits public agencies to withhold records that fall under certain exemptions, including one for notes, preliminary drafts, memoranda, recommendations or other records in which opinions are expressed or actions are proposed. In addition, the KORA exempts records the disclosure of which would violate state law, such as the state law governing communications between an attorney and a client. It was also noted that the completed report was provided to the requester. Therefore, this office could not conclude there was a knowing or intentional KORA violation, and no further action was taken.

Kansas Department for Children and Families

Contact: An individual requested a list of attendees at a "healthy marriage initiative" meeting with the Secretary on April 7, 2011 and any records regarding that meeting.

Allegation: The Kansas Department for Children and Families (then the Department of Social and Rehabilitative Services) improperly withheld responsive records, failed to adequately state the grounds for denying release of said records, misused KORA exemptions, and made misleading denials, all in violation of the KORA.

Action Taken: Upon investigation, the Department discovered additional records it had in its possession that were responsive to the request. Upon the Department's assurance that it would send the additional records to the complainant, and no

further contact having been received by this office from the complainant in the intervening period, this office's file was closed with no further action being taken.

Kansas Department of Corrections

Contact: An employee of the Kansas Department of Corrections requested records related to the selection process for a post with the Department for which he had applied. The request was denied because some of the records requested were personnel records not subject to disclosure and because the request appeared in part to be a request for feedback on the interview process rather than a records request. A contact was made with this office.

Allegation: The Kansas Department of Corrections improperly refused to provide requested records, in violation of the KORA.

Action Taken: Upon investigation, it was learned that some of the requested records had not been used in the selection process. Records that do not exist cannot be produced. The remainder of the requested records were not produced either because they were not retained after the selection process ended; are considered personnel records, which are not required to be disclosed under the KORA; or are subject to other KORA exemptions. Therefore, this office could not conclude there was a knowing or intentional KORA violation, and no further action was taken.

Kansas Department of Corrections

Contact: An inmate requested Kansas Department of Corrections policies related to testing protocols, instrument operation, training procedures and qualification for on-site drug testing equipment. The Department denied access to the records. The requester disagreed with the denial, and a contact was made to this office.

Allegation: The Kansas Department of Corrections improperly denied a KORA request.

Action Taken: Upon investigation, this office learned that the Department withheld the records under the KORA exemption for records of emergency or security information or procedures of a public agency, which include those that permit an agency to be free from dangers or threats, such as procedures designed to detect inmate drug use. It appeared that the requested policies reasonably fell within this exemption to disclosure. Therefore, this office could not conclude there was a knowing or intentional KORA violation, and no further action was taken.

Kansas Department of Corrections

Contact: Complainant requested records from the Kansas Department of Corrections. The Department denied access to some of the requested records and charged what the requester believed were unreasonable fees to produce the remainder of the records. A contact was made to this office.

Allegation: The Kansas Department of Corrections improperly denied a portion of a KORA request and charged unreasonable fees for providing the remaining documents.

Action Taken: Upon investigation, it was determined that the request was more in the nature of a request for information, rather than for records. The KORA does not require public agencies to create records to respond to a KORA request. Nonetheless, the Department conducted a search for records that might be responsive and provided the requester a fee estimate for providing the records. Based on a comparison of the fees the Department requested to fees established by other Kansas public agencies, this office could not conclude that the requested fees were unreasonable, particularly in light of the volume of information requested and the work required to produce it. Therefore, this office could not conclude there was a knowing violation of or an intentional failure to furnish information as required by the KORA.

Kansas Department of Corrections

Contact: Complainant requested records from the Secretary of the Kansas Department of Corrections. Another individual at the Department responded to the request. A contact was made to this office.

Allegation: Complainant's KORA request to the Secretary of the Kansas Department of Corrections was responded to by another individual at the Department.

Action Taken: This office found that there was no KORA violation. The Department's response to complainant's request was timely, and the KORA does not require that a response come from any particular person at an agency. Additional matters raised by the complainant did not involve the KORA.

Kansas Department of Education

Contact: An individual requested records from the Kansas State Department of Education regarding the Licensure Review Committee, including communications between the Commissioner of Education and Department staff. The requester was provided with some records, but the Department advised that there were no communications between the Commissioner and Department staff regarding the matter. The requester did not believe that there were no such communications. A contact was made with this office.

Allegation: The Kansas State Department of Education violated the KORA by failing to provide all requested records.

Action Taken: This office requested that the Department conduct another search for responsive records. The Department replied that no additional responsive records were found. The Department explained that decisions on the type of matter at issue have been delegated by the Commissioner to the Director of the Department's Teacher Education and Licensure team; thus, there was no need for communications between the Commissioner and Department staff. This office could not conclude that there was a knowing violation of the KORA, and not an

intentional failure to provide information as required by the KORA. No further action was taken.

Kansas State Board of Nursing

Contact: Complainant alleged that the Kansas State Board of Nursing violated the KORA by failing to respond to complainant's KORA request within three days and failing to provide records in a timely manner. A contact was made to this office.

Allegation: Failure to respond to a KORA request within three days and failure to provide records in a timely manner.

Action Taken: The matter was resolved informally, and no further action was taken.

Kansas State Board of Nursing

Contact: Complainant alleged that the Kansas State Board of Nursing violated the KORA by failing to provide requested records. A contact was made to this office.

Allegation: Failure to provide requested records, in violation of the KORA.

Action Taken: Upon investigation, this office found no KORA violation. The requested records had been provided, and additional matters complained of did not involve the KORA. No further action was taken.

Osawatomie State Hospital

Contact: Complainant, a state employee, alleged that her privacy was violated when she was assigned the same state employee number as a current state employee that she was given to her as a resident worker while she was hospitalized at Osawatomie State Hospital (OSH). A contact was made to this office.

Allegation: Use of state employee number that was originally assigned to her while hospitalized as a juvenile is a violation of her privacy and possibly a breach of confidentiality.

Action Taken: This office determined that the complaint did not involve a violation of the KORA. The complainant was referred to the Kansas Department of Administration, Office of Personnel Services. No violation of the KORA was found, and no further action was taken.

COUNTIES

Johnson County

Contact: An individual requested records from the Johnson County Board of Commissioners related to a previous KORA request and alleged that he did not receive a response within the required three business days. A contact was made to this office.

Allegation: The Johnson County Board of Commissioners failed to provide a timely response to the KORA request.

Action Taken: This office contacted counsel for Johnson County. The Assistant County Counselor advised she had not received this request or the previous request. Upon investigation, she learned that the requester's emailed KORA requests were screened out by the County's email filter due to a link included in the emails. The County has now set its email filter so that future emails from the requester will not be blocked. The Counselor advised the complainant that there were no documents responsive to the second request, noting that to the extent any documents related to the first request were generated once the County became aware of the request, they were not subject to disclosure under K.S.A. 2014 Supp.45-221(a) (2) and (20). Because it did not appear that the County had violated the KORA or intentionally failed to furnish information, no further action was taken by this office.

Johnson County District Court

Contact: Complainant alleged that the Johnson County District Court violated the KORA by failing to provide court transcripts upon request. A contact was made to this office

Allegation: Failure to provide court transcripts, in violation of the KORA.

Action Taken: This office found no violation because the complaint does not involve the KORA. The court transcripts, which had not yet been prepared, would be available through complainant's attorney when prepared by the court reporter.

Linn County Sheriff, Linn County Jail and Linn County Attorney's Office

Contact: A newspaper "repeatedly" requested the Linn County Sheriff and Linn County Jail release records identifying two robbery suspects. The paper's publisher said they did not receive a response to the requests. A contact was made to this office and the Linn County Attorney's office. Due to a possible conflict, the County Attorney's Office requested this office to review the complaint.

Allegation: The records request was improperly denied, with no reason given.

Action Taken: This office contacted the Sheriff's office, which advised that the office received one call requesting the information, and the caller was asked to call back to speak with the undersheriff. No call back from the requester was received. In addition, the information was released later that evening, after the judge in the case signed the probable cause affidavit. The Linn County Attorney's Office stated that it had advised the requester to contact the Sheriff's office for the records, because that office had the records and the County Attorney's Office did not. This office requested additional information from the newspaper publisher regarding the matter, but did not receive a response. This office concluded that there had been no violation of the KORA, and no further action was taken.

CITIES

City of Oakley Police Department

Contact: Complainant alleged that the Oakley Police Department refused to provide information regarding a death. A contact was made to this office.

Allegation: The Oakley Police Department violated the KORA.

Action Taken: This office contacted the complainant to request clarification of his complaint and more information. Complainant did not respond; therefore no further action was taken.

City of Ulysses

Contact: A Ulysses City Councilman alleged that the City violated the KORA by failing to provide a copy of the bill for a City telephone when requested. The County Attorney, who also was the City Attorney, referred this matter to this office due to a potential conflict of interest. (See also KOMA complaints, below.)

Allegation: The City of Ulysses violated the KORA by failing to provide the requested record.

Action Taken: Upon investigation, this office learned that at the time the request was made, the phone bill had not been received by the City and thus was not a public record; further, the bill was provided to the requester when the City received it.

Therefore, this office could not conclude that a knowing violation of the KORA had occurred, and no further action was taken.

Parsons Police Officers Association

Contact: Complainant alleged that the Parsons Police Officers Association refused to provide requested records, claiming the Association was not covered by the KORA. A contact was made to this office.

Allegation: The Association refused to provide requested records, in violation of the KORA.

Action Taken: This office contacted the Association regarding the complaint. The Association decided to provide the records. No further action was taken.

REFERRALS TO COUNTY OR DISTRICT ATTORNEY OFFICES

- Pleasant Township Trustee and Treasurer (Butler County) – failure to provide requested records. (See also KOMA Referrals, below.)
- Doniphan County Library District #1 (Doniphan County) - failure to provide copy of board packet after request. (See also KOMA referral, below.)
- Douglas County Zoning and Codes Department (Douglas County) – failure to provide requested records. See Fiscal Year 2016 County Report for more details.
- U.S.D. No. 290 (Franklin County) – failure to provide requested records.
- Johnson County Jail, Sheriff Frank Denning and Correct Care Solutions (Johnson County) - failure to provide requested records. See FY 2016 County Report for more details.
- Frankfort Community Care Home, Inc. (Nemaha County) – Denying access to requested records. (See also KOMA Referrals, below.) See county report for more details.
- Osborne County Appraiser (Osborne County) – failure to provide requested records. See county report for more details.
- Saline County Clerk (Saline County) -- failure to provide a formal response to KORA request.
- Scott County Hospital (Scott County) – failure to provide requested records, failure to communicate via complainant's preferred method of communication, and failure to provide guidelines for making KORA requests. See Fiscal Year 2017 County Report for more details.
- Wichita Police Department (Sedgwick County) – failure to provide records. See county report for more details.

- Kansas City Kansas Community College (Wyandotte County) – failure to provide requested records; failure to respond to requests within three business days.

KOMA COMPLAINTS

STATE AGENCIES

Kansas Corporation Commission

Contact An individual alleged the Kansas Corporation Commission (“the Commission”) did not delegate authority to the Chairman or staff to take personnel action, and that she was terminated by the Commission without a public vote. The individual contacted this office.

Allegation The Commission failed to delegate authority to take personnel actions and take a public vote on employment action in violation of the KOMA.

Action Taken: This office contacted the Commission for information. Upon investigation, it was determined that the Commission’s statutes required it to appoint certain positions. Because the Commission must act to appoint individuals to certain positions, it must also act to remove or terminate those positions. Although the Commission could have voted to delegate authority to take personnel action on its behalf to one of its members or staff, it had not made such a delegation of authority. Because a public body cannot take binding action in secret, the entire Commission was required to act on personnel matters, which required a vote taken at an open meeting. Because it did not take a public vote or delegate authority as required, this office requested that the Commission take remedial action in an open meeting to ratify any and all personnel actions taken against any individuals on behalf of the Commission. This office also requested that the Commission delegate to one or more named individuals the authority to make personnel decisions, or in the absence of such a delegation, that the whole Commission take personnel actions in an open meeting. This office also requested the Commission undergo training so it could understand and comply with its obligations under the KOMA. The Commission promptly complied with these requests. Based on this, no further action was taken by this office.

Kansas State Board of Nursing

Contact: A Kansas State Board of Nursing member sent an email to all the Board members, inquiring whether other Board members received an email from a member of a Board task force concerning a pending bill, and whether there would be a violation of the KOMA if the Board members responded to the task force member’s questions via email. The chairperson responded that the Board only exists when it is properly convened, and urged the Board member to direct any questions to the Board’s legal counsel. He also suggested that no one respond to the task force member’s email until the Board’s legal counsel was consulted. No other Board member responded to any of these emails. The Board was concerned that this exchange might constitute a meeting under the KOMA’s serial communications rule and self-reported the possible violation to this office.

Allegation: An email sent to Board members and the response might constitute a meeting under the KOMA’s serial communications rule and thus might violate the KOMA.

Action Taken: Upon reviewing the information provided, this office could not conclude that a KOMA violation occurred, because nothing indicated that the emails were intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the Board, a requirement for a serial communication to be a meeting. The Board member's inquiry was whether answering questions via email "was a violation of the open meetings rules." Whether an action violates the provisions of the KOMA is a question of law outside the Board's purview. Because of this, it cannot be "a matter that would require binding action to be taken" by the Board. No further action was taken, but it was suggested that the Board request their attorney to provide updated KOMA training at its next regularly scheduled meeting, in order to avoid the danger of inadvertent KOMA violations through email communications.

COUNTIES

Bourbon County Commission

Contact: An individual alleged that the County Commission violated the KOMA. A contact was made to this office.

Allegation: The Bourbon County Commission violated the KOMA by improperly using an executive session to discuss a tax sale.

Action Taken: This office contacted individuals who were present during the executive session and also when the session was requested and voted upon. Upon investigation, it appeared that the executive session was used to discuss legal issues arising in conjunction with the tax sale.

Douglas County Commission/Lawrence-Douglas County Health Department/Lawrence City Council/Lawrence Memorial Hospital

Contact: Complainant alleged that the Douglas County Commission, the Lawrence-Douglas County Health Department, the Lawrence City Commission and the Lawrence Memorial Hospital violated the KOMA by failing to comply with statutory requirements for executive sessions. The complaint was made to the Douglas County District Attorney's office, which referred the matter to this office because of a conflict of interest.

Allegation: The agencies failed to comply with statutory requirements for executive sessions.

Action Taken: Based on the information provided, this office was unable to find a KOMA violation, beyond a possible technical violation by the Lawrence-Douglas County Health Board that appears to have been addressed in subsequent practice. No further action was taken.

Saline County Commission

Contact: Complainant attempted to attend a Saline County staff meeting that was listed on a document titled "Weekly Public Meeting Notice and Agenda." He believed that because the meeting was identified on the Saline County Commission's agenda, it was open to the public. He was not permitted access to the meeting. A contact was made to this office.

Allegation: Complainant was refused access to an open meeting in violation of KOMA.

Action Taken: Upon review of the materials provided by the complainant, it was determined that the staff meeting was not covered by the KOMA, because a majority of the membership of the Commission did not attend, and the staff who participated in the meeting were not a public body or agency within the meaning of the KOMA. The mere fact that the meeting was noted on a Commission agenda did not make the meeting subject to the KOMA. As a result, this office could not conclude that a knowing violation of the KOMA had occurred, and no further action was taken.

CITIES

Anthony City Commission

Contact: Complainant alleged that certain Anthony City Commissioners violated the KOMA by having a majority of Anthony City Council members and the Anthony City Administrator attend a Harper County Economic Development Board meeting. A contact was made to this office.

Allegation: A majority of Anthony City Commissioners attended a Harper County Economic Development Board meeting in violation of the KOMA.

Action Taken: No evidence was provided that the business or affairs of the City Commission were discussed; therefore, there was no "meeting" for the purposes of KOMA and thus no KOMA violation.

Basehor City Council

Contact: Complainant alleged that the Basehor City Council's failure to discuss the reason for terminating the city administrator's employment in public shows that the decision to terminate happened outside of a public meeting. A contact was made to this office.

Allegation: The Basehor City Council discussed termination of the city administrator outside of a public meeting in violation of the KOMA.

Action Taken: This office contacted each person who was a member of the City Council at the time of the alleged violation. Each of the members on the City Council at the

time of the alleged violation denied discussing termination of the city administrator's employment outside of an open meeting. Additionally, one of the individuals reported discussing this employment matter with other Council members during an executive session held the week prior to the Council's action, as well as previously. These discussions were held using the provisions of K.S.A. 75-4319(b)(2) for "consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship." This is one of the recognized exceptions in the KOMA. This office could not conclude that a knowing violation of the KOMA had occurred, and no further action was taken.

Baxter Springs City Council

Contact: Complainants alleged that prior to a city council meeting, several council members met at a councilman's home and discussed hiring an attorney and preparation of a city ordinance; that subsequently, a majority of council members engaged in meetings or serial communications that constituted a meeting to reach agreement to hire an attorney; and that three council members on a committee held meetings at a local business that were not posted or open to the public and public business was discussed during the meetings.

Allegation: Various council members met and/or engaged in serial communications to discuss council and committee business outside of public meetings in violation of KOMA.

Action Taken: Upon investigation, this office determined that there was insufficient evidence that Council members violated the KOMA by meeting or engaging in serial communications outside an open meeting to discuss hiring an attorney and preparing an ordinance, or by meeting to discuss council committee business outside an open meeting. However, the Council did recess into executive session on one occasion without complying with the statutory requirements for meeting minutes. Training was recommended for current Council members.

Basehor City Council

Contact: A citizen stated that the Basehor City Council and the Mayor convened a special meeting without giving the complainant notice as he had requested. The meeting was held at 7:00 am, which complainant implied may have been intended to prevent the public from attending. A contact was made to this office.

Allegation: The Basehor City Council failed to give requested notice of a special meeting and held the meeting in the early morning to discourage attendance, in violation of the KOMA.

Action Taken: This office contacted the Basehor City Attorney regarding the complaint. The City Attorney advised that the City Clerk had not received the complainant's request for notice of meetings because it was sent to an invalid email address. The City Attorney also noted that the complainant's spouse had received notice of the meeting. Finally, the City Attorney stated that the meeting was scheduled at 7:00 am to accommodate the council members' schedules, because they also

hold full-time jobs. This office could not conclude that a knowing violation of the KOMA had occurred, and no further action was taken.

City of Ulysses

Contact: A Ulysses City Councilman alleged that the City Mayor divulged matters discussed in an executive session of the City Commission to a third party. The Commissioner asked the Grant County Attorney to investigate and prosecute the City Mayor for this as a violation of the KOMA. (See also KORA complaints, above.) The County Attorney, who was also the City Attorney, referred the matter to this office as a potential conflict of interest.

Allegation: The Mayor of Ulysses violated the KOMA by divulging matters discussed in an executive session of the City Commission to a third party.

Action Taken: Upon investigation and review, this office noted that the KOMA does not prohibit members of a public body from discussing information obtained in an executive session with third parties, although it could constitute a waiver of privilege (if the meeting was for purposes of consultation with an attorney) or a violation of other laws or ordinances and may suggest that there was no need for an executive session. Therefore, this office could not conclude that a knowing violation of the KOMA had occurred, and no further action was taken.

REFERRALS TO COUNTY OR DISTRICT ATTORNEY OFFICES

- Pleasant Township Clerk (Butler County) – unspecified illegal actions during meetings. (See also KORA referrals, above.)
- Doniphan County Library District #1 (Doniphan County) - failure to provide notice of meetings. (See also KORA referral, above.)
- Ensign City Council Members (Gray County) – discussion by two council members of council matters outside of an open meeting, resulting in possible serial communications; use of executive session to consult with an attorney who was not present. See county report for more details.
- Hamilton County Hospital Board of Trustees (Hamilton County) – alleged violation of KOMA by Board members who remained after the end of a meeting to hear public comments on Board business. See county report for details.
- Labette Community College Board of Trustees (Labette County) - failure to state justification for executive session. See county report for more details.
- Easton City Council (Leavenworth County) – variety of concerns, including improperly adjourning into executive session.

- City of Mission Hills City Council (Miami County) – concerns regarding use of special meetings; lack of meeting minutes; location of meetings; use of a program called “Doodle” for scheduling meetings, which complainant believes could be used for serial communication; and meeting notices.
- Miami County Commission (Miami County) – discussing business before study sessions; making decisions at study sessions without a recorded vote and discussing business over lunch. Referred to Johnson County due to a conflict. See Johnson County report for more details.
- Lost Springs City Council (Marion County) – failing to give orally requested meeting notice; conducting a secret meeting; passing a mill levy without notice to the public.
- Louisburg City Council (Miami County) – meetings outside of open meetings. See county report for more details.
- Miami County Commission (Miami County) – deliberations outside of open meetings. See Johnson County report for more details.
- Frankfort Community Care Home, Inc. (Nemaha County) – holding a closed session. (See also KORA referrals, above.)
- Garfield City Council (Pawnee County) – concerns regarding the mayor and council members meeting outside of open meetings and improper calling of an executive session (no reason given). See county report for details.
- Phillips County Hospital Board (Phillips County) – failure to advise that the request to be notified of meetings would be discontinued for the next fiscal year. See county report for details.
- Phillips County Commissioners (Phillips County) – two Commissioners speaking in favor of the county on a hospital bond issue at a public meeting.
- University Support Staff Senate/Kansas State University (Riley County) – attempting to vote by Internet; holding a secret meeting without public notice.
- Stafford City Council (Stafford County) – holding an improper executive session.
- Stevens County Commission (Stevens County) – concerns regarding improper use of executive sessions, including failing to comply with statutory requirements for recessing into executive sessions and making binding decisions in executive sessions.