

**The Open Government Training Advisory Group  
Report to the Attorney General  
December 2019**

On December 6, 2016, Attorney General Derek Schmidt established the Kansas Attorney General's Open Government Training Advisory Group to carry out the provisions of K.S.A. 2019 Supp. 75-761(a). The group consists of 14 members representing a diverse constituency appointed by the Attorney General.

**2019 Open Government Training Advisory Group Membership**

**Office of the Attorney General**

Athena Andaya, Deputy Attorney General – Chair

Philip Michael, Assistant Attorney General – Vice Chair

Lisa Mendoza, Assistant Attorney General, Director of Open Government Enforcement

**Kansas Association of Broadcasters**

Kim Wilhelm, News Director, KWCH12

**Kansas Press Association**

Sarah Kessinger, Publisher, Marysville Advocate

**Kansas Association of Counties**

Bill Kassebaum, Morris County Counselor

**League of Kansas Municipalities**

Nicole Proulx Aiken, Attorney, City of Shawnee

**Kansas Association of School Boards**

Tracey Hannah, U.S.D. No. 458 (Basehor-Linwood) Board Member

**Kansas County and District Attorneys Association**

Darrin Devinney, Butler County Attorney

Shawn Minihan, Assistant District Attorney, Johnson County District Attorney's Office

**Kansas Department of Administration**

Cheryl Whelan, Director, Office of Administrative Hearings

**At-Large**

Darin Beck, Director, Kansas Law Enforcement Training Center

Ron Keefover, President, Kansas Sunshine Coalition for Open Government

Sharon Wolters, Smith County Clerk

## **ADVISORY GROUP DISCUSSION**

The Advisory Group met three times: May 3, 2019; October 25, 2019; and December 23, 2019.

### **May 3, 2019**

The first meeting of the Kansas Attorney General's Open Government Training Advisory Group (Advisory Group) for 2019 was conducted on May 3, 2019. The Advisory Group discussed the 2018 Annual Report submitted to the Attorney General, open government computerized training, open government resources, open government training presentations, and pending legislation.

#### **2018 Annual Report Review**

The 2018 Open Government Training Advisory Group Annual Report was submitted to General Schmidt on December 27, 2018. General Schmidt approved the Advisory Group's recommendations.

#### **Update on Open Government Resources**

The 2017 and 2018 Advisory Group Annual Reports recommended that the Advisory Group develop an inventory of open government resources to be housed on the Office of the Attorney General website. Recommendations of specific materials to be housed included: Kansas Attorney General Opinions with a synopsis; list of cases; the Kansas Legislature's Briefing Book; and an easier-to-print online copy of *A Citizen's Guide to KOMA-KORA*. Deputy Attorney General Athena Andaya provided an update on these open government resources. The Advisory Group discussed how these resources should be presented on the Office of the Attorney General's website.

#### **Open Government Computerized Training**

The Advisory Group continued the Computerized Training Subcommittee with the following members: Philip Michael, Office of the Kansas Attorney General - Chair; Nicole Proulx Aiken, League of Kansas Municipalities; Darin Beck, Kansas Law Enforcement Training Center; Darrin Devinney, Kansas County and District Attorneys Association; Kim Wilhelm, Kansas Association of Broadcasters; Shawn Minihan, Kansas County and District Attorneys Association; and Ron Keefover, Kansas Sunshine Coalition for Open Government.

The subcommittee's task is to provide recommendations to the Advisory Group regarding the structure and content of computerized training on the Kansas Open Meetings Act (KOMA) and the Kansas Open Records Act (KORA).

The subcommittee met on April 17, 2019. The subcommittee discussed the status of the subcommittee members' draft scripts and the process for review and submission to

KWCH 12. The subcommittee members were in the process of completing draft scripts for review by the subcommittee for the following videos:

- Exceptions
- Information versus Records
- Three Business Days and Fees
- Public Agency Responsibility

### **Open Government Training**

The Advisory Group received an update on training conducted or planned by the Office of the Attorney General from AAG Philip Michael. Training on both the KOMA and the KORA was planned for the following dates and times:

- April 3 – McPherson Police Department KORA/KOMA training – McPherson
- May 1 – Kansas County Clerks and Election Officials Association Annual Conference – Wichita
- May 9 – City of Olathe – Olathe
- May 30 – Kansas Association of Public Information Officers – Wichita
- June 4 – Kansas Criminal Justice Information System annual conference – Topeka
- June 14 – City Attorney’s Association of Kansas – Wichita
- June 21 – Kansas Association of County Counselors CLE – Salina

### **Pending Legislation**

The Advisory Group received a briefing on pending legislation from Philip Michael, Vice Chair and Assistant Attorney General (AAG). AAG Michael reviewed the following bills:

- 2019 Senate Bill 213 would have provided the Attorney General the authority to refuse to represent or indemnify a public agency, employee of a public agency, or an agent of a public agency in an action, proceeding, or investigation involving alleged violations of the KOMA or the KORA.
- 2019 Senate Bill 214 would have amended the entities/persons to whom information acquired by, and records of, the State Child Death Review Board may be disclosed.
- 2019 House Bill 2020 would have removed the requirement that applicants for admission to practice law submit certain personal information pertaining to residence, date of birth, gender, and social security number. The bill also would

have eliminated the requirement that the Supreme Court Nominating Commission and district judicial nominating commissions are public bodies and subject to the Kansas Open Meetings Act and would have removed limitations on closed or executive sessions currently in statute. In addition, the bill would have changed the canvassers involved in a Supreme Court Nominating Commission election or district judicial nominating commission election from the Clerk of the Supreme Court, the Secretary of State and the Attorney General to the Clerk of the Supreme Court and two or more persons who are members of the Kansas Bar residing in the state, as designated by the Chief Justice. The bill would also strike requirements that the Clerk create a list of names and addresses of persons who returned a ballot in a Supreme Court Nominating Commission election or district judicial nominating commission election and send them to the Secretary of State. The bill would have further eliminated the requirement that the Clerk of the Supreme Court use a certified roster of attorneys provided by the Secretary of State when determining which attorneys are entitled to ballots in Supreme Court Nominating Commission elections or district judicial nominating commission elections. The bill would have provided that lawyer members of the district judicial nominating commission would be elected by lawyers who are qualified electors of the district and are registered with the Clerk of the Supreme Court. The bill would also have changed the required retention of ballots and certificates from Supreme Court Nominating Commission elections to six months instead of five years and provided that ballots and certificates could not be inspected unless ordered by the Supreme Court.

- 2019 House Bill 2067 would have created the Kansas Transparency Act. The Act would require audio and video broadcasts of all legislative committee hearings required to be open to the public pursuant to KOMA beginning in 2020. The bill would have required audio and video broadcasts to be made available in real time to the public on the internet and archived for the duration of the biennium. The bill would have required the Director of Legislative Administrative Services to equip all committee rooms in the capitol building and the legislative chambers with audio and video broadcasting equipment and provide for the necessary operation and maintenance. The bill would have allowed for the suspension of the broadcasting requirements by the House of Representatives or the Senate when there is an equipment failure and the purpose is not to avoid the recording requirements of the Act.
- 2019 House Bill 2098 would have amended the Kansas Open Records Act (KORA). The bill would have changed K.S.A. 45-221(a)(10). These proposed amendments were a result of the 2018 Judicial Council Criminal Law Advisory Committee study on House Bill 2571 and Senate Bill 360. The bill would have amended the language of the statute giving each of the six factors found in K.S.A. 45-221(a)(10)(A-F) equal weight. The bill would have weighed the public interest factor against the other five factors that favor withholding records. This bill also would have provided a definition of “public interest” that requires more than mere public curiosity. “To be a matter involving public interest, the matter must affect a

right or expectation of the community at large and further public evaluation of governmental performance.”

- 2019 House Bill 2137 would have amended the K.S.A. 45-229 of the KORA. This bill would have required an annual legislative review of statutory exceptions to disclosure of public records under the KORA.
- 2019 House Bill 2219 would have amended the Kansas Open Meetings Act (KOMA). The bill would have required all public bodies or agencies subject to the provisions of KOMA to record audio or video of any meeting that is required to be open to the public. The bill would have also required the public bodies or agencies subject to KOMA to make the audio or video recordings accessible to the public within 24 hours after the meeting.
- 2019 House Bill 2290\* created the Division of Crime Victims Compensation with the Office of the Attorney General. The bill also added the contents of following bills into HB 2290:
  - HB2360 AN ACT concerning criminal history record checks; relating to entities providing care to children, the elderly or individuals with disabilities; the Kansas bureau of investigation. This bill would have established a process for a qualified entity (as defined) to request a criminal history record check by the KBI for official determination of the qualifications and fitness of a person to be permitted to serve as a provider.
  - HB 2137 AN ACT concerning the Kansas open records act; relating to exceptions to disclosure of public records; legislative review
  - Sub for HB 2018 AN ACT creating the Kansas criminal justice reform commission; relating to duties and membership; report to legislature.
  - SB 102 AN ACT establishing the Kansas closed case task force; relating to identification and investigation relating to hits to the combined DNA index system (CODIS). This bill would have required the closed case task force to meet in open meeting.
  - SB 211 AN ACT concerning the attorney general; relating to youth suicide prevention; appointment of a Kansas youth suicide prevention coordinator; duties.
  - SB 212 AN ACT concerning the attorney general; relating to victim notification; creating a statewide Kansas victim information and notification everyday (VINE) coordinator.
- \* 2019 House Bill 2290 was approved by Governor Kelly on Thursday, May 16, 2019 and made effective on publication in the *Kansas Register* on May 30, 2019.
- 2019 House Bill 2365\*\* amended KSA 60-473 concerning the peer support counseling session communication privilege within the Code of Civil Procedure. The bill would have made notes, records, or reports arising out of peer support counseling sessions involving National Guard members confidential, exempt from

the Kansas Open Records Act, and inadmissible and not subject to disclosure or discovery in judicial and other proceedings.

\*\* 2019 House Bill 2290 was approved by Governor Kelly on Wednesday, April 17, 2019, and made effective on July 1, 2019.

## **October 25, 2019**

The second meeting of the Advisory Group for 2019 was conducted on October 25, 2019. The Advisory Group received a report from the Computerized Training Subcommittee and an update on open government training.

### **Report from the Computerized Training Subcommittee**

The Computerized Training Subcommittee presented four draft videos.

- KORA 101
- Exceptions
- Three Business Days and Fees
- Records versus Information

The Advisory Group provided some recommended changes, which will be incorporated into the videos for the Advisory Group's review.

### **Open Government Training**

The Advisory Group received an update on trainings conducted by the Office of the Attorney General and the Kansas Sunshine Coalition for Open Government from AAG Philip Michael, and Ron Keefover. Training on both the KOMA and the KORA was planned on the following dates:

- June 23 – Kansas Association of Reserve JAGs CLE – Topeka
- July 17 – Annual Tour – Wichita
- July 19 – Annual Tour – Colby
- July 24 – Annual Tour – Kansas City, KS
- July 25 – Annual Tour – Independence
- July 26 – Annual Tour – Topeka
- August 16 – Kansas African American Affairs Commission – Topeka
- September 18 – Kansas Department of Labor – Topeka
- September 19 – Kingman County Sheriff's Department – Kingman
- October 17 – Pittsburg Police Department – Pittsburg

- October 29 – Department for Children and Families Fall CLE – Topeka
- November 18 – Coffey County Commission – Burlington

## **December 23, 2019**

The third and final meeting for the Advisory Group was conducted on December 23, 2019. The Advisory Group received a report from the Computerized Training Subcommittee and discussed and approved the draft 2019 Open Government Training Advisory Group report to the Attorney General.

### **Report from the Computerized Training Subcommittee**

The Computerized Training Subcommittee met via phone conference on November 15, 2019. The subcommittee reviewed draft scripts for the KORA videos and made changes based on the Advisory Group recommendations made at the October 25, 2019, Open Government Training Advisory Group meeting. The subcommittee provided an update on the status of the draft videos.

### **Update on Open Government Resources**

Deputy Attorney General Athena Andaya provided an update on open government resources. Lists of KORA and KOMA opinions and appellate cases with links to the documents are in the process of being posted to the Office of the Attorney General website.

### **Open Government Training**

The Advisory Group received an update on trainings conducted/planned by the Office of the Attorney General from AAG Philip Michael. Training on both the KOMA and the KORA was planned on the following dates:

- December 17 – City of Salina – Salina
- January 17 – Kansas Agriculture and Rural Leadership, Inc. (KARL) – Topeka

## **RECOMMENDATIONS**

The Advisory Group developed two recommendations.

1. Continue the Open Government Training Advisory Group, which was established on December 7, 2016.
2. Continue to develop computerized training. The Advisory Group recommends continuing the development of a series of short informational videos directed to the

following audiences: the general public; members of governing bodies; public employees; and attorneys. These videos would be housed on the Kansas Attorney General Website, and the webpage would include a separate introductory video by the Kansas Attorney General. The subcommittee intends that all videos be available to all audiences although specific videos would provide more detailed information that may be of interest to specific audiences.