

A Citizen's Guide to Open Government

Kansas Open Meetings Act
Kansas Open Records Act



PROVIDED BY KANSAS ATTORNEY GENERAL

KRIS W. KOBACH



Dear Fellow Kansans:

Our state has a long and rich history of ensuring that all of our citizens can participate in our democracy.

That's why our two principal open-government laws – the Kansas Open Records Act and the Kansas Open Meetings Act – are so important. They establish the legal requirement that the decision making of our public bodies remains open and subject to scrutiny and participation by our citizens.



As your attorney general, I share responsibility to enforce these laws and to help Kansans understand what they do, and do not, require.

This brochure is intended to help you and other Kansans understand the basic requirements of the Open Records Act and the Open Meetings Act. It answers common questions about the two and helps you understand what rights you, as a Kansan, have to obtain the records of your government and to view its activities.

In partnership with others who have a keen interest in open government – including the Kansas Sunshine Coalition – our office provides training for local and state officials about their duties and obligations under these laws. We work to resolve open government disputes and bring enforcement actions when necessary.

But I believe strongly that the best outcome is when everyone knows and respects our open government laws and we prevent violations from occurring in the first place. That's the point of this and similar publications.

For more information, you can check our website at www.ag.ks.gov or call my office at (785) 296-2215.

Thank you for your interest in open government!

Best wishes,

A handwritten signature in black ink that reads "Kris W. Kobach". The signature is written in a cursive style and is set against a light-colored, slightly textured background.

Kris W. Kobach
Kansas Attorney General

Understanding the Kansas Open Meetings Act (KOMA)

The Purpose and Scope of the KOMA

What is the KOMA about?

The KOMA is a law that guarantees anyone the right to observe governmental policy makers, such as your local school board, city council, county commissioners or most functions of the state legislature, that make the decisions affecting your life.

What types of groups are subject to the KOMA?

The KOMA applies to all of the political and taxing subdivisions in Kansas. There are approximately 4,000 public bodies and agencies that fall into this category. The KOMA may also apply to other organizations if they were created or controlled by a public body or agency or act on behalf of a public body or agency. This includes committees or sub-groups created by a public body or agency.

How do you know if a group is going to be subject to the KOMA?

That is determined by looking at all of the facts surrounding the creation and operation of the group. We also look at what services are provided by a group. If a group is providing a governmental service, it is more likely it will be subject to the KOMA.

The KOMA does not apply to the meetings of private groups such church groups, private clubs, private corporations or businesses or any other private associations.

Does the KOMA apply to every meeting related to the government?

No, the KOMA only applies to a public body or agency. It does not include the staff meetings for a public agency. It does not apply to elected officials who are not part of a public body, such as the governor.

Does the KOMA apply to Kansas courts or judges?

No, courts and judges are excluded from the KOMA.

Meeting Matters Not Covered by the KOMA

Does the KOMA include a requirement for an agenda?

No, although the creation of an agenda before the meeting will help provide focus for both the public body or agency and the public, there is no requirement in the KOMA to create an agenda. This also means that the content of the meeting may be changed at any time by amending the agenda.

Does the KOMA require detailed minutes of all of the items discussed at a meeting?

No, the KOMA does not speak to minutes or agendas, except to require that motions to go into executive session be completely recorded in the minutes. Meeting minutes are the responsibility of the public body or agency and the public body or agency determines what is recorded in the minutes.

Is the KOMA the same thing as Roberts Rules of Order?

No, the KOMA does not address the conduct of meetings or other procedural matters, such as the order of business, content of reports or length of time that may be spent on a topic of discussion.

KOMA Requirements for Public Bodies and Agencies

What does the KOMA require a public body or agency to do?

There are two main requirements. First, any meetings must be open to all members of the public. Second, notice of meetings must be provided to anyone who has requested it.

What does “open” mean in the KOMA?

It means that the meeting must be conducted in a way that the public may observe or listen to the proceedings.

Does that mean a meeting must be moved to another location if members of the public cannot get into the meeting room?

No, the KOMA does not require that public meetings be moved to larger or better locations. Meeting locations are left up to the public body or agency. Unless there is evidence that the public body or agency deliberately moved a meeting to a location with limited access to avoid public observation, there is no conflict with the requirements of the KOMA.

Does a public body or agency have to let members of the audience speak at a meeting?

No, the KOMA does not require that the public be allowed to speak. Some other law may require a public hearing with the opportunity to speak on that issue, but the KOMA does not.

Can I use a camera or other recording device to record a meeting?

Yes, the KOMA allows recording, but subject to reasonable rules to prevent disruption of the meeting, safety hazards, or other legitimate concerns. You may want to contact the public body or agency in advance to learn about any rules that may apply to recordings.

May one or more members of a public body or agency participate in a meeting by telephone?

Yes, as long as the meeting is open to the public so they might listen to the discussion.

KOMA Meetings

What is a meeting, as defined by the KOMA?

Three conditions must be met in order for a meeting to occur. All three must be satisfied. They are:

1. A gathering or assembly in person or by telephone or any other medium for interactive communication.
2. By a majority of the members of the public body or agency.
3. Discussion of the business or affairs of that public body or agency.

How is “interactive communication” applied?

The best way to determine if “interactive communication” has taken place is to think of it as two-way communication. For example, an email from one member of a public body to the rest of the body members is only one-way until there is a reply to all, and then it becomes a two-way communication that may violate the KOMA.

The two-way communication can be by any means, including using individuals as “go-betweens.”

What is a majority of the public body or agency?

Majority is one more than one-half of the membership. When counting the number of members, vacant positions must be counted as well. For example, if a school board has seven members, but there are two vacancies, a majority remains four.

Are there any topics that may be discussed by a majority outside of a meeting?

The only topic that may be discussed by a majority outside of a meeting is to determine a mutually acceptable meeting time so notice of that meeting may be provided.

Discussion alone triggers the KOMA requirements, regardless of whether an agreement is reached or a survey of how members are going to vote takes place. None of those actions are permitted.

Can members avoid the KOMA requirements by discussing public body or agency business with less than a majority of the other members?

Not really, as interactive communications in a series are forbidden by the KOMA. A violation will occur if all of the following conditions are met:

- Interactive communications collectively involve a majority of the public body or agency,
- A common topic is discussed concerning the business or affairs of the public body or agency, and
- There is intent by any or all of the participants to reach agreement upon a topic that requires binding action in an open meeting by the public body or agency.

Can a majority of the members attend a meeting of another group?

Yes, as long as they refrain from any discussions about the business of their public body or agency.

This limitation applies to all formal and informal gatherings, such as conferences, ribbon cuttings or social clubs.

KOMA Notice Requirements

When does a public body or agency have to provide notice?

Notice is required only when someone requests to receive notice of meetings. There is nothing in the KOMA that requires general notice, such as publishing the agenda in the newspaper or posting it on the agency website.

How do I request notice?

All you need to do is make a request to the appropriate public body or agency. Although not required, it is a good idea to make your request in writing and keep a copy.

What kind of notice should I expect?

The KOMA does not specify the method of notice; it could be verbal or written. The notice must provide you with the time, place and date of the proposed meeting.

You may receive a single notice for all regular meetings of the public agency or body. You should still receive notice for any special meetings or changes in the time, place or date of regular meetings.

How long is my request effective?

Your request is good for the fiscal year of the public body or agency. But, the public body or agency must contact you and ask if you wish to continue to receive notice before they discontinue providing it to you.

Is there a minimum time required to give notice?

No, the KOMA only requires “reasonable” notice. In some situations, that could be very short. If you believe a public body or agency did not provide reasonable notice, discuss the situation with the public body or agency to learn when others, including the members, received notice of a meeting. If this does not resolve the matter, please see the Enforcement section of this guide.

Executive Sessions: Closing an Open Meeting

What is an executive session?

An executive session is when the public body is permitted to discuss certain subjects in private.

What are the procedures to enter into an executive session?

An executive session may only take place once an open meeting is convened. A motion must be made to enter into executive session. That complete motion and the resulting vote must be entered into the minutes.

What must a motion to enter into an executive session say?

There are three parts:

1. A statement describing the subject(s) to be discussed in executive session, without revealing confidential information.
2. The justification: a reference to one of the permitted topics for executive session contained in the KOMA.
3. The time and place at which the open meeting will resume.

If a public body does not include all three portions, is the executive session illegal?

Probably not, as the courts have determined a technical violation occurs if there is an error in the motion, but the public body maintained the spirit of the KOMA.

Who may attend an executive session?

Only the members of the public body holding the executive session have a right to attend. The public body may include others, if they believe their information is important.

Can the public body make a binding decision in executive session?

No. Binding decisions must be made in an open meeting. The public body may reach a consensus during an executive session; however, binding action must occur during an open meeting.

What topics may be discussed in executive session?

The KOMA permits several topics including these most common topics:

- To discuss personnel matters relating to non-elected personnel
- Consultation with an attorney for the public body or agency which would be deemed privileged in the attorney-client relationship
- To discuss employee-employer negotiations
- To discuss data relating to the financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships
- To discuss matters relating to action affecting a person as a student, patient or resident of a public institution
- For preliminary discussion of acquisition of real property
- To discuss matters relating to security measures that protect specific systems, facilities or equipment including persons and private property if related to the agency.

What is permitted under the nonelected personnel matters subject?

The public body may only discuss its own individual employees and applicants for employment. They are not permitted to discuss elected officials, independent contractors, candidates for appointment to other boards or commissions or general concerns affecting all employees, such as a proposed pay plan.

What is permitted under the attorney consultation subject?

The public body's attorney must attend the executive session, even by speaker phone, to provide legal advice to the body.

Non public body or agency personnel may only attend if they are considered part of the client organization, such as consulting engineers.

What is permitted under the employee and employer negotiation subject?

Only discussion about negotiations with recognized bargaining units, not general employee matters.

What is permitted under the financial and trade secret subject?

Financial information of a private business or any trade secrets they may need to disclose to a public body or agency. General discussion of tax incentives is not permitted.

What is permitted under the student, patient or resident of a state institution subject?

The public body may discuss any matter that may have an impact on the individual's status as a student, patient or resident of a state institution, either in a positive or negative way. The individual may request that any hearing be conducted in an open meeting.

What is permitted under the property acquisition subject?

The public body may only discuss purchasing, not selling, real property. Real property is land with or without structures. A discussion of purchasing equipment or software is not permitted here.

What is permitted under the security subject?

The public body may review security measures for all of the facilities and operations under their control.

Enforcement of the KOMA

What should I do if I think there has been a KOMA violation?

The KOMA can be enforced by anyone – private citizens, the county or district attorney, or the Attorney General. You have three options if you think there has been a KOMA violation.

1. You may file your own case in district court against the members of the public body or agency.
2. You may file a complaint with the county or district attorney.
3. You may file a complaint with the Office of the Attorney General. If you decide to file a complaint with the attorney general's office, you must use the complaint form available online at www.ag.ks.gov.

What if I disagree with the findings of the county or district attorney?

You may file your own case in district court against the members of the public body or agency. The Attorney General will not review the findings of a county or district attorney. That is the role of the courts.

What happens if a violation is found?

That depends upon the situation. If we find that a violation has occurred, depending upon the severity, the typical resolution is to enter into a settlement agreement such as a consent order. We are seeking compliance with the KOMA and assuring that future violations do not occur.

If the circumstances show a pattern of willful disregard of the KOMA rules, we may impose a finding of violation on the public body or agency, or take the individuals responsible to court.

What can the Attorney General do to a violator?

The Attorney General may fine individual members of the public body or agency up to \$500 for each violation, require completion of Attorney General approved training, order the public body or agency to cease and desist from violating the KOMA, require future compliance with the KOMA, and require submission of proof of compliance. A violation of the KOMA may subject the individual to removal from office by ouster or recall.

What can a court do to a violator?

A court may fine individual members of the public body or agency up to \$500, require completion of Attorney General approved training, order the public body or agency to cease and desist from violating the KOMA, reverse any actions that were taken illegally, and potentially subject the individual to removal from office by recall or ouster.

The court shall award attorney fees and costs to private parties if they bring the action, and the public agency did not act in good faith and with a reasonable basis in law.

The KOMA is a civil statute, not criminal, so the violator will not be sent to jail under the KOMA.

NOTES

Understanding the Kansas Open Records Act (KORA)

The Purpose and Scope of the KORA

What is the purpose of the KORA?

The KORA is a law that permits the public to review or get copies of public records. There are two parts of the law. One part governs the procedure that public agencies must follow when someone requests a public record. The other part categorizes public records and, under certain circumstances, permits an agency to withhold public records.

What are public records?

Public records are records made, maintained, kept by or possessed by a public agency, or any officer or employee of a public agency pursuant to the officer's or employee's official duties, regardless of location, which are related to the functions, activities, programs or operations of any public agency. They may be in any form, including electronic storage and emails. The content of records varies widely; some track the routine activities of government while others contain personal information about citizens and businesses.

Why would a public agency have personal information about citizens and businesses?

Public agencies have regulatory responsibilities that require gathering personal information. Common examples include tax returns, driver's licenses and automobile registration. Many professions are licensed, such as doctors, dentists, cosmetologists, attorneys and accountants to name a few. Personal information is collected as a part of the initial licensing, but also in case of complaints and investigations.

What types of groups are subject to the KORA?

The KORA applies to State of Kansas agencies and all of the political and taxing subdivisions in Kansas. There are approximately 4,000 groups and organizations that fall into this category. The KORA may also apply to other organizations if they were created or controlled by a public agency or act on behalf of a public agency.

How do you know if a group is going to be subject to the KORA?

That is determined by looking at all of the facts surrounding the creation and operation of the group. We also look at what services are provided by a group. If a group is providing a governmental service, it is more likely they will be subject to the KORA.

The KORA does not apply to the records of private citizens or groups such as church groups, private clubs, private corporations or businesses or any other associations.

Does the KORA apply to court records?

Generally, yes, however the KORA permits the judicial branch to make its own rules for reviewing or obtaining records. Those rules are posted on the Kansas Supreme Court website and at the district courts throughout the state. The KORA does not apply to records made, maintained or kept by individual judges.

Is the KORA the same as the Freedom of Information Act (FOIA)?

No, the FOIA is the federal law that applies to records of the federal government. The FOIA and the KORA are different laws that have similar provisions, but are not exactly the same.

Procedures for Obtaining Copies of Public Records

How do I request a record?

The best place to begin is with either the public agency's designated record custodian or Freedom of Information Officer. One staff member may fill both roles. In either case, they will assist you with your request.

Do I have to put my request in writing?

A public agency may require you to do that, but not on any particular form. The reason for this requirement is so both you and the public agency are clear on what records you are seeking.

Who can request a record?

Anyone. There is no requirement that the person making the request have any special relationship to the record. There is no special status for any person making a record request, even if the record is about them.

What may the public agency ask of me when I request records?

The public agency may ask you for your name and address. It is optional, but the agency may ask you for some form of proof of your identity.

Do I have to go in person to the place where the records are kept to make my request?

No, you may make your request from anywhere. Many record transactions are handled through the mail or even online.

What do I do if the public agency that has the records doesn't have any full-time staff or regular business offices?

The KORA permits very small public agencies that do not have regular office hours to establish reasonable hours when you can inspect or copy records, but the agency may require 24 hour notice. All of the other requirements for access remain the same.

May I take a public record and have it copied elsewhere?

Not without the record custodian's written permission. If copies cannot be made where the records are kept, the custodian will make arrangements to have a copy made. Public record custodians are required to keep original documents safe, so they will be available for any person who might request that record.

Responding to Record Requests

When can I expect to receive the records?

It depends upon the availability of the records. Some records may be provided at the time they are requested, others may have to be gathered and reviewed before releasing them.

What is the "three day" requirement?

A public agency must act upon your request as soon as possible, but not more than three business days later, beginning the day after the request was received.

Does this mean I will get the records in three days?

No, the public agency must communicate with you within those three days. The public agency may provide the records, or explain that they do not have the records you want, or may inform you that the search or review is underway and will be completed as soon as possible.

Is there a deadline when the records must be given to me?

No, each request and record is unique, although if there is a delay, the record custodian should provide a time estimate to you. Some records may need to be gathered from remote locations. Other records that contain closed portions must be reviewed and appropriately redacted or blacked out.

Does the KORA require that a public agency answer my questions?

No, the KORA only applies to records as they exist at the time you ask for them. If you are asking for information, analysis or an explanation about a policy, you might get them, but not under the rules of the KORA. The KORA does not require an agency to do research for you or provide written answers to your questions.

May I request records that will be created in the future?

No, records not yet in existence are not subject to the KORA. Even though many records are routinely created, such as meeting minutes and monthly financial reports, your request must be made after the records are created and available.

KORA and Fees

May a public agency charge fees for accessing or copying records?

Yes, the KORA permits public agencies to recover their actual costs for gathering and copying records.

What kinds of fees are allowed?

The agency may only charge the direct cost for staff time to gather, review, photocopy and send the records to you. The agency may not charge for overhead or indirect costs.

Is there a standard fee schedule that all public agencies must use?

No, the KORA permits each public agency to establish their fees. However, they must represent their best estimate for actual costs.

May a public agency collect fees in advance?

Yes, the KORA allows public agencies to collect estimated fees in advance. If the actual cost is less, you will be refunded the difference. If it is more, the agency may bill you for the additional costs.

What can I do if I believe the fees are unreasonable?

If the records are from an executive branch state agency under the jurisdiction of the governor, there is an appeal process through the Secretary of Administration. If the records are from another public agency, you may complain to the county or district attorney or the attorney general. If the public agency can justify the fees and the fees are based upon actual costs, then the fees are reasonable.

Prohibited Uses of Public Records

May I use a public record that contains names and/or addresses on it, so I can contact the people on the list to offer goods or services for sale?

No, the KORA prohibits using lists of names and addresses as a marketing tool except in very limited cases, such as professional organizations that offer educational opportunities for licensed individuals.

If I request a public record that contains names and addresses on it, do I have to sign a special form?

Yes, the KORA permits the public agency to require that you certify that you will not use the names and addresses for any prohibited purposes. If you do not sign the form, the public agency does not have to provide you the records.

Record Content and Accessibility

Is there a general rule about public records being open?

Yes, unless a record is specifically closed by law, all public records are open for inspection and any person may view them to make their own notes or ask for copies from the public agency.

How will I know if a record is closed by law?

Ask for a copy of the record you would like to see. If it is closed, the record custodian will tell you and provide you the appropriate source of the law that closes the record.

Who decides that records are closed?

The legislature reviews and approves all the laws that close records. They have adopted general policies for closing public records. They are:

- The public record is of a sensitive or personal nature concerning individuals.
- The confidentiality of the public record is necessary for the effective and efficient administration of a governmental program.
- The public record affects confidential information.

How many records are closed?

There are more than 300 specific records closed by Kansas law. Many other records are closed by federal law. Many of the records that may be closed contain information that individuals and businesses are required to provide to the government, such as tax returns, reports of infectious diseases or private financial information. Federal laws close individual medical records and driver's license information.

Does the record custodian have any authority to release these records?

In some limited cases, yes. The law that closes a record may contain conditions that temporarily close a record or grant the record custodian the discretion to release a record.

For example, sealed bids are closed, but only until the bid contract is awarded, then the records are open. Another example is when the record custodian must use his or her judgment about whether a record contains information of a personal nature and disclosing the information would be an unwarranted invasion of personal privacy.

Enforcement of the KORA

What should I do if I think there has been a KORA violation?

The KORA can be enforced by anyone -- private citizens, the county or district attorney, or the Attorney General. You have three options if you think there has been a KORA violation.

1. You may file your own case in district court against the public agency.
2. You may file a complaint with the county or district attorney.
3. You may file a complaint with the Office of the Attorney General. If you decide to file a complaint with the attorney general's office, you must use the complaint form available online at *www.ag.ks.gov*.

What if I disagree with the county or district attorney's conclusions?

You may file your own case in district court against the public agency. The Attorney General will not review the decisions of a county or district attorney. That is the role of the courts.

What happens if a violation is found?

That depends upon the situation. If we find that a violation has occurred, depending upon the severity, the typical resolution is to enter into a settlement agreement such as a consent order. We are seeking compliance with the KORA and assuring that future violations do not occur.

If the circumstances show a pattern of willful disregard of the KORA rules, we may impose a finding of violation on the public body or agency, or take the individuals responsible to court.

What can the Attorney General do to a public agency if they violate the KORA?

The Attorney General may fine the public agency up to \$500 for each violation, require completion of Attorney General approved training, order the public agency to cease and desist from violating the KORA, require future compliance with the KORA, and require submission of proof of compliance.

What can a court do to a public agency if they violated the KORA?

The KORA provides that a district court in the county where the record is kept may look at disputed records in private and make a decision about what may be released.

The court may order that the documents be produced for you. If the public agency did not have a good faith reason to withhold the records, the court may fine the agency up to \$500 if the action is brought by the county or district attorney or Attorney General.

The court shall award attorney fees and costs to private parties if they bring the action, and the public agency did not act in good faith and with a reasonable basis in law.

KORA is not a criminal statute, so there is no possibility of anyone going to jail for violating KORA.

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