

# 2018

## **Kansas Open Meetings Act Kansas Open Records Act Annual Report**

Kansas Fiscal Year 2018  
(July 1, 2017 – June 30, 2018)

*Pursuant to K.S.A. 75-753*



**KANSAS  
ATTORNEY GENERAL**

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Dear Fellow Kansans:

In 1868, the Kansas Legislature enacted law – still on the books today – commanding that county commissioners “shall sit with open doors, and all persons conducting in an orderly manner may attend their meetings.” From that simple beginning, the concept of open government has been deeply embedded in Kansas law. Today, the Kansas Open Meetings Act and the Kansas Open Records Act are the two principal laws governing the modern legal requirements for open government in Kansas.

Those statutes grant certain authority to, and impose certain duties on, the attorney general for their enforcement and for education and training about their requirements. K.S.A. 75-753 requires the attorney general to compile and publish information about complaints and investigations involving these two open government laws whether handled by the attorney general or by the county and district attorneys throughout the state. This report for state fiscal year 2018 is the product of that statutory requirement.

The first two sections of this report list the Kansas Open Meetings Act and Kansas Open Records Act complaints resolved by the attorney general’s office during the reporting year, including a brief summary of the allegations and the disposition.

The third section contains the information provided by county and district attorneys throughout the state regarding both KOMA and KORA complaints they resolved during the reporting year.

The fourth section lists the enforcement actions taken by the attorney general’s office during the reporting year.

Finally, the fifth section provides a list of trainings conducted by staff from the attorney general’s office during the reporting year.

In addition to the information in this report, the Office of the Attorney General maintains substantial information about open government on our website. Information there contains a list of all enforcement actions taken by the attorney general pursuant to K.S.A. 45-251(e) and K.S.A. 75-5320d(e), formal attorney general opinions interpreting provisions of the KOMA and the KORA, information about the Open Government Training Advisory Group established pursuant to K.S.A. 75-761, and general information about the KOMA and the KORA.

We hope this information is helpful.

Sincerely,

Derek Schmidt  
Kansas Attorney General



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# Kansas Open Meetings Act Complaints

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## COMPLAINTS AGAINST STATE AGENCIES

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### **Emporia State University**

Complaint: The editor of the school newspaper filed a complaint with this office alleging that ESU violated the KOMA when it failed to allow the public to attend the meetings of the ESU Emergency Notification Team (“ENT”).

Resolution: Upon review, it was determined that the ENT was not a subordinate group within the meaning of the KOMA, and thus none of its meetings were required to be open to the public. The ENT was not formally constituted, and had no constitution or by-laws. It did not hold regular meetings, was not required to maintain meeting minutes, and had no officers. The individuals holding positions that carry ENT responsibilities have no term of office. While the ENT may have specific duties or powers, the ENT as a whole or any one of its members is authorized to deploy emergency notifications. However, the ENT has no other decision-making role for the university. The ENT is a group of employees in university positions that consider the need to authorize and deploy emergency notifications to provide alerts, warnings, and safety or protection instructions. This is the sole function of the ENT. In light of the foregoing, it was determined that the ENT gathering was a staff meeting of university personnel who may have a role in emergency events and university facilities, and thus was not subject to the KOMA. Because the KOMA was not violated, no further enforcement action was necessary.

### **Kansas Corporation Commission**

Complaint: A member of the commission individually filed a complaint with this office self-reporting a possible violation of the KOMA involving serial communications.

Resolution: Whether a series of communications is a violation of the KOMA is very fact specific, and each situation must be decided on its facts. Upon review, it was determined that the identified communications did not meet all the elements of a serial communication. Some of the communications did concern the business or affairs of the body, and may arguably have involved an intent to reach an agreement of a matter requiring binding action by the commission. However, these communications were not interactive, and a majority of the commission was not ultimately involved. Still other communications involved a majority of the commission and concerned the business or affairs of the body, but were not interactive and there was no intent to reach an agreement on a matter requiring binding action. Another communication only involved the chairman advising the other two commissioners that he intended to place an item on a business meeting agenda, without further substantive discussion of the agenda item. Finally, one of the chairman’s communications with another commissioner involved a majority, concerned the business or affairs of the body, and showed an intent to reach an agreement on a matter requiring binding action. However, this communication was not interactive. Although ultimately no violation of the KOMA was identified, this

## Kansas Open Meetings Act Complaints, continued

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office recommended the commission attend KOMA training, and to renew its efforts to abide by the systems the commission established to avoid KOMA violations. No further enforcement action was taken.

### Senate Commerce Committee

Complaint: A member of the committee filed a complaint with this office alleging that the chair, vice-chair and ranking minority member of the committee and possibly others engaged in serial communications about passage of a bill in violation of the KOMA.

Resolution: Upon review, the office could not conclude that the chair, vice-chair and ranking minority member violated the KOMA, as these three individuals did not constitute a majority of the membership of the committee, which has eleven members. This office declined to investigate whether any communications outside of an open meeting ultimately reached a majority of the members of the committee. This is because even if a majority of the committee was involved in such communications, such activity was protected by the “speech and debate” clause of the Kansas Constitution, Article 2, Section 22, which is an exception to the requirement that such discussions be open. Thus, even if a KOMA violation did occur, the speech and debate clause would provide immunity under the circumstances. Therefore, no further enforcement action was taken.

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## COMPLAINTS AGAINST CITIES

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### Baldwin City Council

Complaint: The city clerk filed a complaint with this office alleging that the council violated the KOMA by engaging in serial communications.

Resolution: Upon investigation, the council stipulated that it violated the KOMA by discussing the mayor’s upcoming appointment to fill a vacant council position outside of an open meeting. The council also stipulated that it violated the KOMA when it failed to comply with the statutory requirements for recessing into executive session when it did not state the justification for the session. This office sought voluntary compliance with the KOMA through a Consent Order that required the council and mayor to receive at least one hour of training on the provisions of the KOMA and not to engage in any future violations of the KOMA. One council member was not required to sign the Consent Order because the violation occurred prior to his appointment to the council. The council promptly complied with the requirements of the Consent Order. No further enforcement action was taken.

### Beverly City Council

Complaint: An individual filed a complaint with this office alleging that the city council violated the KOMA by not permitting the public to be present for a meeting.

## **Kansas Open Meetings Act Complaints, continued**

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Resolution: The complaint form submitted by the complainant did not contain sufficient information about the alleged violation. This office requested the complainant provide specifics about the alleged violation and any available supporting documentation. The complainant did not respond to this request, therefore, no further enforcement action was taken.

### **City of Augusta**

Complaint: An individual filed a complaint with this office alleging that the city council and other city boards and agencies violated the KOMA by failing to provide notice of all regular and special meetings of each city board and agency as requested.

Resolution: Upon investigation, the city conceded it failed to provide notice for nine meetings held by city boards and agencies for which it was responsible to provide notice, in violation of the KOMA. The violation was the result of a lack of coordination by city staff and the lack of a written policy to guide staff on providing meeting notices. The city provided numerous meeting notices to the requester, which showed its good faith attempts to comply with both the spirit and intent of the KOMA. The city agreed to, and complied with, a request to take remedial action to resolve these concerns, including the adoption of a written policy or procedure to clarify the lines of responsibility for providing notice. The city also agreed to seek out available training on the KOMA. No further enforcement action was taken.

### **City of Augusta**

Complaint: The city manager filed a complaint with this office self-reporting that the city possibly violated the KOMA by failing to provide notice for a meeting of the Convention and Tourism Board as requested.

Resolution: Upon investigation, the city conceded it inadvertently failed to provide notice for a meeting of the Convention and Tourism Board for which it was responsible to provide notice. The city explained that this oversight occurred during the transition period between a retiring employee and her replacement. The failure to provide the meeting notice to a person requesting it was a violation of the KOMA. Following the self-report, the city contacted the individual who requested the notice and explained the situation; the individual appreciated the follow up and indicated she would not be filing a complaint with this office. In response to a request from this office for remedial action, the city manager reviewed the city's processes for providing notice with the new employee, who also created an Excel database to track all meetings that are subject to the KOMA and whether notices are delivered for each meeting. Additionally, the city reviewed the applicable Administrative Directive covering KOMA notices. Finally, the city manager advised that it was updating its website, which would include an enhanced city calendar to allow citizens to sign up for meeting notices via email or text messages. Because the city agreed to, and promptly complied with, a request to take remedial action to resolve the violation, no further formal enforcement action was taken.



**Mayor Kathleen Souza, City of Herington**

Complaint: An individual contacted this office alleging that a commissioner, also serving as the mayor, failed to comply with the KOMA and the KORA.

Resolution: This office requested the individual complete a complaint form as required by K.S.A. 45-252(a) and K.S.A. 75-4320e, as well as provide specifics and supporting documentation concerning the alleged violations. The individual did not respond to this request. No further action was taken on the complaint.

**Great Bend City Council**

Complaint: An individual filed a complaint with this office alleging that the council violated the KOMA by holding a special meeting without adequate public notice, failed to provide notice to all council members about the nature of the meeting, and improperly scheduled council meetings; complainant was also concerned that some council members discussed matters related to the special meeting outside of an open meeting.

Resolution: Upon review of the complaint, it was determined that the KOMA does not require public notice of meetings, providing notice to council members about the nature of the meeting, or scheduling of council meetings. Therefore, there was no violation of the KOMA on these grounds. Additionally, it was determined that the notice of special meeting was provided two business days in advance of the meeting, and four calendar days before the actual meeting. The KOMA does not specify a time limit for receipt of notice prior to a meeting; however, the notice must be given in a “reasonable time.” What is reasonable depends on the circumstances. Under the facts provided, there was nothing to suggest that the special meeting notice was unreasonable. Finally, this office could not draw any conclusion about whether there was an improper discussion of matters related to the special meeting outside of an open meeting, and requested additional information from the complainant clarifying the concerns. Because the complainant did not respond to this request, no further enforcement action was taken.

**Jennings Township Board**

Complaint: An individual filed a complaint with this office alleging that the board violated the KOMA by failing to provide her with notice of its meetings, and violated the KORA by failing to provide her with copies of meeting minutes upon request.

Resolution: Upon investigation, it was determined that after receiving complainant’s request for notice, the board chairman consulted with the county attorney about what action to take because no one had ever asked for notice before. Thereafter, the chairman emailed the complainant to advise that she would be notified of any meetings, but that the board did not meet regularly. There were no meetings between the time the complainant first asked for notice and when the chairman responded to her request. With regard to complainant’s concern that she did not receive copies of the board’s meeting minutes when she requested them, the board advised that it did not keep meeting minutes, thus had no records to provide. The KOMA does not require a public body to keep meeting minutes except with regard to setting forth compliance with motions to recess into executive session. Because the board had not held any executive

## **Kansas Open Meetings Act Complaints, continued**

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sessions, it did not have any meeting minutes. The board's actions were consistent with the requirements of the KOMA. The KORA only requires a public agency to provide copies of records in existence at the time of the request. Because there were no meeting minutes, there was no violation of the KORA. Based on the foregoing, no further enforcement action was taken.

### **Liberal City Commission**

Complaint: An individual filed a complaint with this office alleging that in 2014 the commission violated the KOMA by holding an executive session to discuss the acquisition of property, but then improperly used it to discuss the sale of property.

Resolution: Upon review, this office declined to take further action due to the age of the complaint and because the composition of the commission had changed since 2014. However, this office contacted the city attorney to advise her of the complaint and to urge the commission to obtain training to ensure that it understood and complied with the KOMA's requirements. Based on the foregoing, no further formal enforcement action was taken.

### **Mulberry City Council**

Complaint: An individual filed a complaint with this office alleging that the city council violated the KOMA by conducting a meeting with only two members present, thus failing to have a quorum.

Resolution: Upon review, the complainant appeared to be alleging that the city council did not have a majority of the membership of the body present to conduct business. Although the complainant requested city council actions be voided, complainant did not provide sufficient information to determine whether binding action was taken or what actions were being challenged. This office requested the complainant provide additional information about this allegation, however the complainant did not respond. Therefore, no further enforcement action was taken.

### **Quinter City Council**

Complaint: An individual filed a complaint with this office alleging that the mayor violated the KOMA by revealing information he received during an executive session.

Resolution: Upon review, it was determined that the KOMA does not prohibit a member of a public body or agency from disclosing what took place during an executive session. Even assuming that the mayor actually disclosed information discussed during an executive session, such disclosures do not violate the KOMA. Based on the foregoing, no further enforcement action was taken.

### **Stafford City Council**

Complaint: An individual filed a complaint with this office alleging that the city council violated the KOMA when it allowed executive sessions to be called by non-elected personnel, allowed non-elected personnel to remain in an executive session, discussed

## Kansas Open Meetings Act Complaints, continued

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information received during an executive session with others, and did not engage in public discussion before voting on matters after holding an executive session.

Resolution: Upon review of the complaint, it was determined that although city personnel may request an executive session, the city council must still follow the statutory requirements for holding an executive session. Additionally, except for executive sessions held for consultation with an attorney, the KOMA permits the presence of non-council members during an executive session if those individuals will aid the council's discussion of the confidential matters. This office also determined that the KOMA does not prohibit council members from revealing information discussed during an executive session, although such disclosures may violate other laws or waive privileges. Finally, this office could not draw any conclusions about whether there were improper motions after executive sessions and requested additional information from the individual clarifying the concerns. Because the individual did not respond to this request, no further enforcement action was taken.

### **St. George City Council**

Complaint: An individual filed a complaint with this office alleging that a city council member engaged in serial communications when he contacted all city council members to discuss the appointment of a city clerk, as well as contacted a city council member at home to discuss the appointment of a city clerk.

Resolution: After investigation, this office determined that the city council did not violate the KOMA. One council member sent an email to another council member indicating that he would not support a particular candidate for city clerk and attached pages from the candidate's Facebook account. The council member indicated that he sent this email to the mayor and all other council members. One council member who received the email forwarded to the mayor, who in turn forwarded it to the city attorney. No council member replied to the email, and there was no evidence that the council members discussed it amongst themselves. This email did not meet the requirements for a serial communication; even though it reached a majority of the council members, concerned the business or affairs of the body, and one member intended to reach an agreement on a matter requiring binding action by the city council, it was not interactive. Merely sending an email, without more, is not a mutual or reciprocal exchange of information. The council member also went to another council member's house to ask if he would be interested in hiring a particular individual to be the city clerk. The council member responded that he would vote for whomever the mayor nominated and that was the end of the discussion. This communication did not violate the KOMA because two members of a five member council do not constitute a majority. Because there was no KOMA violation, no further enforcement action was taken.

**COMPLAINTS AGAINST COUNTIES**

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**Atchison County Commission**

Complaint: A member of the media filed a complaint with this office alleging that the commission violated the KOMA when it reached a consensus in executive session to terminate the county ambulance service provider contract, then failed to return to open meeting to hold a public vote on the consensus.

Resolution: Upon investigation, the commission conceded that it reached a consensus in executive session. However, it also stated that the consensus merely consisted of agreeing the county counselor should draft a letter terminating the contract for the commission's consideration at its next meeting. Although it did not hold a vote approving the drafting of a letter for future consideration in an open meeting, no binding action by the commission was required to authorize the county counselor to draft a letter for future consideration. Importantly, the commission held a public discussion and vote on termination of the contract, and did not take any intervening action to terminate the contract before its public vote. Therefore, there was no binding action in executive session in violation of the KOMA. This office did, however, request the commission take remedial action after an investigation revealed that the commission's motions to recess into executive session fell short of meeting the statutory requirements. The commission complied with this request, and no further enforcement action was taken.

**Harvey County Board of Commissioners**

Complaint: Two individuals filed a complaint with this office alleging the commission violated the KOMA by not maintaining accurate and complete meeting minutes because there was no record of a discussion related to Camp Hawk in the commission's meeting minutes.

Resolution: Upon review, it was determined that the KOMA does not contain any requirements concerning the content of meeting minutes except with regard to motions for executive session. Members of a public body can determine the form and content of the minutes. A failure to record all commission discussions or motions may not be good business practice, but does not violate the KOMA unless it relates to executive sessions. Because there was no violation of the KOMA, no enforcement action was required.

**Johnson County Board of County Commissioners**

Complaint: An individual filed a complaint with this office alleging that the board violated the KOMA by engaging in serial communications, and further alleged that the board's lack of public discussion before moving to terminate the county manager supported the conclusion that board members must have discussed the matter outside of an open meeting.

Resolution: This office reviewed the board's meeting minutes and determined that prior to making a motion to non-renew the county manager's contract, the commission held a series of executive sessions to discuss personnel matters of non-elected personnel. This is a proper justification for an executive session. The subject matter of the executive

sessions was “to conduct performance reviews.” Personnel evaluations may lawfully take place in executive session. Following the executive sessions, the board voted to approve a salary increase for the county auditor. The board then voted “to officially provide notice to the county manager that it would not renew” his employment contract. Standing alone, the lack of a public discussion about whether to non-renew the county manager’s employment contract was insufficient to suggest any commissioner engaged in serial communications in violation of the KOMA. No further enforcement action was taken.

**Johnson County Park and Recreation Board and Chairman Paul Snider**

Complaint: Two individual board members filed a complaint with this office alleging that the board chairman violated the KOMA by engaging in serial communications.

Resolution: Upon review, this office determined that the board chairman contacted a majority of the board members individually to seek support for his stated desire to serve a second term. These individual contacts did not reach a majority of the membership of the board until the chairman contacted one member via Facebook, and in a series of interactive exchanges, conveyed that he had spoken with virtually the entire board and secured their individual approval for him to seek a second term as chairman. The interactive Facebook messages were a serial communication in violation of the KOMA. This office sought voluntary compliance with the KOMA through a Consent Order with the board chairman, which required him to obtain at least one hour of training on the provisions of the KOMA and not engage in any future violations of the KOMA. The chairman promptly complied with the requirements of the Consent Order. The investigation also revealed the board engaged in technical violations of the KOMA by failing to comply with the statutory requirements for making executive session motions. This office requested the board take remedial action by adopting a checklist to ensure compliance with the statutory requirements for recessing into executive session, as well as completion of at least one hour of training on the requirements of the KOMA. The board promptly complied with the request for remedial action.

**Leavenworth County Board of County Commissioners – Commissioners Smith and Klemp**

Complaint: An individual filed a complaint with this office alleging that two commissioners violated the KOMA by improperly discussing outside of an open meeting a motion that transferred direction and supervision of her county department to the county clerk. The individual believed that the commissioners should be subject to ouster and recall, and that the transfer of supervision should be voided.

Resolution: Upon review, this office determined that the KOMA does not authorize the remedies of ouster and recall; it also does not authorize review of substantive matters related to an individual’s employment and/or employment contract. Because such matters are outside the scope of the KOMA, this office declined to review or express an opinion about such matters. One remaining matter did fall within the scope of the KOMA—the allegation that the two commissioners spoke outside of an open meeting concerning one commissioner’s motion to transfer supervision of the individual’s

## Kansas Open Meetings Act Complaints, continued

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department to the county clerk. Both commissioners denied speaking to any other board member or county employee, and other county employees deny that they had advance knowledge of the motion to transfer supervision of the department to the clerk. There was a suggestion that one of the commissioners, who was appointed to the position after another commissioner resigned, may have spoken to another commissioner or others before his appointment became effective. Even if true, which the commissioner denied, the KOMA only applies to members of a public body. It does not prohibit a member of a public body or an individual not yet appointed to a public body from discussing county business outside of an open meeting. This office was unable to conclude that the commissioners violated the KOMA. This office declined to consider or express an opinion as to the terms of any employment contract, whether any other laws were implicated, or whether the BOCC's actions were consistent or inconsistent with any contract as such matters are outside the scope of the KOMA. Because there was no violation of the KOMA, no enforcement action was required.

### **Leavenworth County Board of County Commissioners**

Complaint: Two individuals filed a complaint with this office alleging that the commissioners violated the KOMA when they discussed county business outside of an open meeting, failed to recess into executive session to discuss non-elected personnel, and moved to terminate all employees involved in a declaratory judgment action concerning the interpretation of employee contracts. The individuals believed that the commissioners should be subject to ouster and recall, and that the board's actions should be voided

Resolution: Upon review, this office determined that the KOMA does not authorize the remedies of ouster and recall; it also determined that the KOMA contains no provisions that address compliance with or violation of, a court order. Because such matters are outside the scope of the KOMA, this office declined to review or express an opinion about these matters. Two matters did fall within the scope of the KOMA. First, the complainants alleged that the statements made by one commissioner suggested that he had spoken to another BOCC member outside of an open meeting about county business. The commissioner publicly denied that he spoke to anyone about his motions affecting the two complainants, and there was no other evidence to suggest that he spoke to any BOCC member directly or through an intermediary. This office was unable to conclude that the BOCC or the commissioner's actions violated the KOMA. Second, the complainants alleged that the BOCC should have discussed personnel matters involving non-elected personnel during an executive session. This office concluded that the KOMA does not require a public body to recess into executive session to discuss personnel matters of non-elected personnel. This is because the KOMA only provides that a public body *may recess* into executive session; it does not mandate executive sessions. The KOMA's provisions concerning executive session do not apply when there is no executive session. This office declined to consider or express an opinion about whether any other individual rights may have been implicated by any BOCC discussions concerning personnel that did not take place during executive session, as these matters are outside of the KOMA. Because there was no violation of the KOMA, no enforcement action was required.



**Marshall County Board of County Commissioners**

Complaint: The county attorney advised that an individual reported to her office that the BOCC violated the KOMA when it used an improper justification to recess into executive session, and requested this office review the matter due to a potential conflict of interest.

Resolution: This office requested the county attorney have the complainant complete a complaint form as required by K.S.A. 75-4320e(a). The complainant did not respond to the request, therefore, no further action was taken.

**Marion County Board of County Commissioners**

Complaint: An individual filed a complaint with this office alleging that the BOCC violated the KOMA when it reached a consensus in executive session concerning hiring decisions, then failed to return to open meeting to hold a vote on its consensus.

Resolution: Upon investigation, this office determined that the BOCC did not take binding action during executive session. While the BOCC did reach a consensus on permitting the chairman to contact a candidate for two available positions to see if they were interested in the job, the chairman was not authorized to finalize any hiring discussions. Instead, he was required to return to the BOCC with information so that it could make final hiring decisions and take final action during an open meeting. Thus, although the BOCC may have reached a consensus during its executive sessions on its preferred candidates, it held a public vote and did not take any intervening action to effectuate its hiring decision(s) before holding a public vote on the matter. Because the commission did not violate the KOMA, no further enforcement action was taken.

**Marion County Board of County Commissioners**

Complaint: The county clerk filed a complaint with this office to self-report that the BOCC violated the KOMA when it failed to provide a “Special Notice” that two commissioners were traveling together in a county vehicle to tour a waste transfer station in McPherson County.

Resolution: Upon investigation, it was determined the BOCC provides a “Special Notice” when the commissioners will be together at a specific place and time and the topic is related to the county in some way. This “Special Notice” differs from the statutory notice described in the KOMA, which is sent separately for any of the commission’s regular and special meetings. The clerk reported that she failed to send this “Special Notice” when two commissioners travelled together to tour the McPherson County Waste Transfer Station. Following review, this office established that while the commissioners constituted a majority and engaged in interactive discussions, they managed to avoid discussing the business or affairs of the body while in the vehicle and on a tour of the waste transfer station. After carefully considering all the available facts, this office concluded that the KOMA was not triggered, and no statutory notice as set forth in the KOMA was required. The commission was advised that the so-called “Special Notice” is not a substitute for the notice required by the KOMA. Because the commission did not violate the KOMA, no further enforcement action was taken.

## **Kansas Open Meetings Act Complaints, continued**

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### **Rush County Zoning Board**

Complaint: An individual filed a complaint with this office alleging that two zoning board members violated the KOMA when they discussed a hog operation after a board meeting, violated the KORA because the board failed to keep meeting minutes, and violated applicable by-laws. The individual also alleged one board member had a conflict of interest and should not have participated in any discussion related to the hog operation.

Resolution: Upon review, this office determined that it did not have authority to enforce by-laws adopted by local governmental entities or to act independently concerning conflict of interest matters based on requirements established by such by-laws. With regard to the KOMA allegation, even if two members of the eight-member zoning board discussed a hog operation after a board meeting, this was not a violation of the KOMA since a majority of the board is five members. There was also no information to suggest that the two members shared their discussion with a majority of the board. With regard to the KORA allegations, this office determined it was not a violation to fail to keep meeting minutes. The KORA establishes a process for how to access public records; it does not establish any rules requiring records to be created or governing the content of the record. This office also determined that the failure to keep meeting minutes was not a violation of the KOMA. The KOMA does not establish any rules requiring meeting minutes to be kept or the content of meeting minutes except with regard to executive sessions. The complaint did not raise any concerns related to executive sessions. Because there was no violation of the KOMA or the KORA, no enforcement action was required.

### **Smith County Commission**

Complaint: An individual filed a complaint with this office alleging that the commission violated the KOMA by improperly recessing into executive session.

Resolution: This office attempted to contact the complainant for additional information, but the contact information was invalid. No further enforcement action was taken.

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## **COMPLAINTS AGAINST OTHER AGENCIES**

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### **Artesian Valley Health System Hospital Board**

Complaint: An individual filed a complaint with this office alleging that the board violated the KOMA by (1) violating board rules on numerous occasions; (2) not following board guidelines in certain situations; (3) by considering whether to hold an executive session to meet with a former employee's attorney; and (4) by speaking outside of meetings on the agenda for an executive session. Following a request for additional information on issue number (4), the individual raised the following alleged violations: (5) former employee met with board president outside of an open meeting; (6) three board members must be meeting "before the meeting" because motions and votes happened quickly; (7) the board was not being impartial, the board president "didn't have a clue," and that she knew "in her heart things are not being done right"; (8) the



## Kansas Open Meetings Act Complaints, continued

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board fired the hospital administrator and quickly hired extra attorneys “all in a matter of 6 weeks without ever blinking an eye”; (9) two board members spoke with a former employee and his attorney in the parking lot and this must be “collusion”; and (10) the two board members who spoke with a former employee and his attorney in the parking lot must have a conflict of interest, and violated the duty of loyalty, obedience, care, board by-laws, and hospital policies.

Resolution: Upon review of the complaint, this office determined the issues raised in issues (1) and (2) were outside the scope of the KOMA. With regard to issue (3), this office determined that a public body is permitted to hold executive sessions to discuss certain matters, and it is not a violation of the KOMA to publicly discuss whether to recess into executive session. In this instance, the board discussed whether to recess into executive session to consult with the attorney for a former employee. After discussion, the board agreed that it could not do so, then adjourned its meeting. This action was consistent with the KOMA. With regard to issue (4), this office determined that the KOMA does not prohibit members of a public body from discussing purely procedural issues, such as a request to add discussion items to an agenda or the need for an executive session, as long as members of the public body do not digress into a discussion of substantive issues. In order to give full consideration to this issue, this office requested the complainant provide any additional information to support her allegation that the board violated the KOMA; the complainant did not provide any additional information to support this allegation. With regard to issues (5), (7), and (10), this office concluded that based on the information provided, as well as existing law, the complainant did not state a violation of the KOMA. With regard to issue (6), this office concluded that based on the information provided, the KOMA required the board to take binding action in public. Even assuming that the motions and votes occurred “quickly,” this, standing alone, did not state a violation of the KOMA. With regard to issue (8), these actions all occurred after the board took binding action during an open meeting as required by the KOMA. This office concluded that the need for, and wisdom of, such decisions were matters that fell outside the scope of the KOMA. With regard to issue (9), the complainant did not state the specific nature of her KOMA concern, but based on the information provided, it appears she was concerned that the board members may have violated the KOMA by discussing the business or affairs of the board outside of an open meeting. This office identified three possible issues of concern: serial communications, meetings and meeting notice and discussion of agendas. Based on the information provided and existing law, this office was unable to conclude that the board violated the KOMA with regard to these three issues. Because the board did not violate the KOMA, no further enforcement action was necessary.

### **Dodge City Community College Board of Trustees**

Complaint: A trustee filed a complaint with this office alleging the board violated the KOMA by discussing an improper subject during an executive session, held meetings without providing the required notice, and engaged in serial communications.

Resolution: Upon investigation, this office determined that the board did not violate the KOMA when it recessed into executive session to discuss confidential data related to a

## **Kansas Open Meetings Act Complaints, continued**

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developer's proposed retail development. This office further concluded that informational meetings between the trustees and the developer, which did not include a majority of the members of the body, did not violate the KOMA. Finally, this office concluded that the informational meetings did not constitute serial communications because there was no evidence that the trustees in one informational session ever communicated with the trustees in another session. Although there was no violation, this office did note that a public body holding meetings in this manner runs a very serious risk of violating the KOMA by members sharing among themselves what they learned or discussed in such meetings. This office did find a technical violation based on the board's failure to comply with the statutory requirements for recessing into executive session, and requested that the board take remedial action, including training, to resolve this concern. The board promptly complied with this request, and no further enforcement action was taken.

### **EMS Study Committee (City of Haven, Yoder Township, Sumner Township and Haven Township)**

Complaint: An individual filed a complaint with this office alleging that the study committee violated the KOMA by meeting without giving public notice and failing to keep meeting minutes, and violated the KORA by failing to respond to her request for records.

Resolution: Upon review of the complaint, it was determined that the KOMA does not require public notice of meetings to be posted/provided or that notice be issued to members of the public body. Notice must be furnished to any person or organization requesting it. This office requested the complainant provide information concerning whether she requested or was aware of any other individual/organizations requesting notice; the complainant did not respond to this request. With regard to the concern that the study committee did not keep meeting minutes, this office did not find a violation. The KOMA does not require a public body to keep meeting minutes except when it recesses into executive session. This office requested the complainant submit additional documentation concerning her KORA complaint since she filed her complaint before the three days required for a response under the KORA expired; complainant did not respond to this request. Based on the foregoing, no further action was taken on the complainant's KORA concern.

### **Kanopolis Public Library Board**

Complaint: An individual filed a complaint with this office alleging that the board violated the KOMA when it failed to notify him and the public of a meeting, and then did not allow the public to observe its meetings.

Resolution: Upon investigation, the office determined the board only meets on the second Monday of each month, and did not meet on the day that complainant alleged it did. The board had not received any requests for notice of its meetings from complainant or any other individual, and the KOMA does not require a public body to provide, post or broadcast to the public that it is meeting. Based on the foregoing, there was no violation of the KOMA, and no further enforcement action was taken.

**Lakewood Hills Home Improvement District**

Complaint: An individual filed a complaint with this office alleging that the district's board violated the KOMA with regard to multiple concerns, including its actions related to: (1) employment relationships; (2) agendas, (3) meeting notice; (4) content of meeting minutes; (5) serial communications; (6) accepting a higher bid; and (7) reasonableness of the notice for a special meeting.

Resolution: Following review, this office determined that: (1) employment relationships fall outside the scope of the KOMA; on issues (2) and (3), this office requested further information on the concerns, which was not provided; (4) except for recording executive session motions, the KOMA does not require meeting minutes or control the content of meeting minutes; (5) there was insufficient information to state a violation of the KOMA; (6) such financial decisions fall outside the scope of the KOMA; and (7) there was no violation based on the generalized allegations of a violation. No further enforcement action was taken.

**Lakewood Hills Home Improvement District**

Complaint: An individual raised additional multiple concerns about the district's board, including its actions related to: (1) executive sessions, (2) agendas, (3) meeting notice, (4) employment relationships, (5) serial communications, (6) content of meeting minutes, (7) board president changing the locks on the clubhouse, (8) conduct of meetings, (9) lack of quorum, (10) misuse of credit card, (11) defaulting on sewer bonds; (12) lack of financial reports, (13) disruptive residents after meeting; (14) board president assaulted district member after meeting; (15) harassment and abuse of district employees, and (16) misuse of Facebook.

Resolution: Following review, this office determined that: on issues (1) and (2), requested further information on the concerns, which was not provided; (3), there was no violation based on the generalized allegations of a violation; (4) and (15), employment relationships fall outside the scope of the KOMA; (5), there was insufficient information to state a violation of the KOMA; (6) determined that except for recording executive session motions, the KOMA does not require meeting minutes or control the content of meeting minutes; on issues (7), (10), (11), (12), (13), (14) and (16), such matters fall outside the scope of the KOMA; (8) the KOMA does not establish rules that govern how a public body conducts its meetings; and (9) the KOMA contains no requirements concerning a quorum, although the district's by-laws did, and that whether the board complied with its by-laws was outside the scope of the KOMA. No further enforcement action was taken.

**Meade County Hospital Board**

Complaint: An individual filed a complaint with this office alleging that two board members violated the KOMA when they continued to discuss board business with the interim CEO after the regular meeting adjourned.

Resolution: This office requested the complainant provide clarification concerning the allegations raised in the complaint, as well as submit any supporting documentation. Following

## **Kansas Open Meetings Act Complaints, continued**

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receipt of the additional information, this office determined that board members did not violate the KOMA as only two of the five members were present. This did not constitute a meeting within the meaning of the KOMA, which requires interactive communication by a majority of the membership of the public body for the purpose of discussing the business or affairs of the body. While there was interactive communication about the business or affairs of the body, a majority of the board was not present, and there was no allegation that the discussion ever reached a majority of the members of the body. Based on the foregoing, there was no violation of the KOMA, and no further enforcement action was taken.

### **Trego Manor Board of Directors**

Complaint: An individual filed a complaint with this office alleging that the board violated the KOMA when three members of the board “stepped into the hallway for a private conversation.”

Resolution: This office requested the complainant provide clarification concerning the allegations raised in the complaint, as well as submit any supporting documentation. The complainant did not respond to the request, therefore, no further action was taken.

### **Trego Manor Board of Directors**

Complaint: An individual filed a complaint with this office alleging that the board violated the KOMA by failing to provide public notice of a board meeting.

Resolution: Upon review, this office determined that the KOMA does not require a public body to provide public notice of its meetings by publishing the notice in a newspaper, on a website or by taking other steps to broadcast notice of the meeting(s) to the general public. The KOMA does require a public body to provide notice to an individual requesting notice of its meetings. This office requested the complainant provide clarification concerning the allegations raised in the complaint, including whether a request was made to the board for notice of meetings, as well as to submit any supporting documentation. The complainant did not respond to this request, therefore, no further action was taken.

### **USD 258 Board of Education (Humboldt)**

Complaint: An individual filed a complaint with this office alleging the board violated the KOMA with regard to the frequency and length of its executive sessions and because all discussion took place in executive session and not during the board’s open meeting(s).

Resolution: This office reviewed the board’s executive sessions recorded in its minutes for approximately a one-year period. During this time, the board held some 14 executive sessions. The review revealed the subject matters discussed during executive session were proper, that the board held public votes on a variety of matters following the executive sessions, and also held public discussions of many matters. Following the review, this office was unable to conclude that the number or length of the executive sessions was unusual or improper given the matters to be discussed. Thus, there was no violation of the KOMA based on the allegations raised in the complaint. However, the review also revealed that while the board made and recorded its motions for

## Kansas Open Meetings Act Complaints, continued

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executive session, it did not include all the required elements each time the motion was made. This office determined this was a technical violation of the KOMA, and requested that the board take remedial action, including the establishment and use of a checklist to ensure its motions contain the required elements, and review of board policies concerning executive sessions. The board promptly complied with this request, and no further enforcement action was taken.

### **USD 290 Board of Education (Ottawa)**

Complaint: An individual contacted this office alleging that the school board violated the KOMA when the school board president engaged in serial communications by discussing the hiring of the next school superintendent outside of an open meeting.

Resolution: The individual submitting the concern did not complete the complaint form required by K.S.A. 75-4320e(a). Although this office requested the individual complete and return the complaint form, he did not do so. Because the individual did not complete and return the complaint form required by law, no further action was taken.

### **USD 365 Board of Education (Garnett)**

Complaint: An individual filed a complaint with this office alleging the school board violated the KOMA because it did not follow the statutory requirements for recessing into executive session, and when he asked for, but did not immediately receive, copies of handouts the school board attorney used during a meeting.

Resolution: Upon investigation, this office determined that the school board's motions to recess into executive session did not meet the statutory requirements set out in the KOMA, and had not for some time. Because the board made the motions, the public knew that it was recessing into executive session, even though the motions were technically deficient. This office requested that the board take remedial action to ensure that each of its motions met the statutory requirements. The board promptly complied. Although the complainant mentioned in his complaint that he did not receive some requested records, he did not raise a formal complaint alleging a violation of the KORA. Nevertheless, this office reviewed the board's actions and determined that request for records did not mention the KORA. Even though the KORA was not mentioned, the school board clerk responded within three business days that she did not have the requested records. This is consistent with the KORA. At some later point, the clerk obtained the records and provided them to the complainant. Based on the foregoing, no formal enforcement action was taken.

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## REFERRALS TO COUNTY OR DISTRICT ATTORNEY OFFICES

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- **Lincoln County Commission** – District #3 Commissioner Alexis Pflough (Lincoln County) – making a Facebook post concerning matters allegedly discussed during an executive session
- **Gardner City Council** – participating in interactive communications via Facebook message. *See* county report for details.

## **Kansas Open Meetings Act Complaints, continued**

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- **Pleasant Township (Butler County)** – participating in serial communications to prepare and submit a recall petition. *See* county report for details.
- **Kansas State Board of Nursing** (self-report) – improper use of executive sessions. *See* county report for details.
- **Flint Hills Community Health Center Board** – denied access to meeting.

# Kansas Open Records Act Complaints

## COMPLAINTS AGAINST STATE AGENCIES

### **Hutchinson Correctional Facility**

Complaint: An individual filed a complaint with this office alleging that HCF violated the KORA when it failed to provide him with position descriptions for certain jobs at the facility for use in a court case.

Resolution: Upon investigation, this office determined that the complainant did not clearly indicate he was seeking the records for use in a court case. HCF has well established policies in effect that allow for fees to be waived or for credit to be extended to the complainant under such circumstances. Because HCF printed the requested records in preparation to honor the complainant's KORA request, it agreed to allow the complainant to inspect the records at no cost in order to resolve this complaint. This office requested and received confirmation that complainant was permitted to inspect the records. Based on HCF's response, no formal enforcement action was taken.

### **Kansas Department of Agriculture, Division of Animal Health**

Complaint: An individual filed a complaint with this office alleging the department violated the KORA when it denied her access to copies of slide presentations used during a seminar.

Resolution: Upon investigation, this office determined that the department hosted a seminar concerning issues related to the pet animal industry. The seminar included non-department speakers who presented PowerPoint slides. These presentations were controlled by the speakers using flash drives and not by the department, and were not saved on department computers; the speakers were not required to submit the materials to the department in advance of the seminar. The speakers provided paper handouts to seminar participants. Based on the language of the KORA request, the department determined that complainant was seeking only electronic records and not paper copies of records. Thus, it advised the complainant it did not have all the speaker presentations she was seeking. At the request of this office, the department searched for any records responsive to the complainant's request, regardless of form, and discovered an employee had personal copies of handouts for three of the non-department presentations. The department provided the complainant with copies of these three presentations, as well as the contact information for the remaining non-department speakers so that she could contact the speakers directly to seek copies of the materials. Because the department's actions were generally consistent with the KORA, no formal enforcement action was required.

### **Kansas Department of Commerce**

Complaint: A member of the media filed two interrelated complaints with this office alleging the department failed to respond to a KORA request; failed to provide: detailed



## **Kansas Open Records Act Complaints, continued**

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information about the reason for the delay in fulfilling the requests and earliest time when records would become available, some records that were expected to be included in the department's response, a legible copy of a record, and the grounds for redacting a contract within three business days; and raised concerns about some redactions.

Resolution: Upon review, this office concluded that the department failed to respond to the complainant's first KORA request or provide a date/time when the records would be available due to an oversight—the department's records custodian left and no one was monitoring KORA matters. Prior to the filing of the complaint, the department discovered this problem and made internal changes to improve tracking and the timeliness of its responses. These changes included ensuring that it would provide a complainant with information on the reason for any delay in providing records. Because the department anticipated and took the remedial measures this office would have required, no further enforcement action was required. With regard to complainant's concern about not receiving a legible copy of a requested record, when she notified the department the copy was not legible, it provided her another copy and further advised that a paper copy would be made available to her if the emailed copy was still illegible. With regard to the concern that the department failed to provide all responsive records, apparently complainant expected a particular contract to be included in the records provided. According to the department, due to the way the KORA request was phrased, it believed this particular contract fell outside the scope of the request. The complainant was advised she could submit a KORA request for this record. The complainant was also concerned she received summaries for some records instead of the records she requested, or no records at all. The department explained that it only had access to summary information, so rather than denying the request, it created a table to provide and explain the summary information. The KORA does not require a public agency to create a record to respond to a request. This action, although not required, complied with the spirit of the KORA. It further explained that it did not have records responsive to a portion of the KORA request. A public agency cannot provide records it does not have. Complainant was also concerned that the department did not cite the grounds for redacting some information within three business days. However, the KORA does not impose such a requirement on a public agency. The complainant was also concerned that the department redacted certain information in a contract related to pricing, and challenged the assertion that the information constituted trade secret. This office declined to conclude that trade secret was improperly asserted, in part because a trade secret cannot be reclaimed once it is revealed; such matters may ultimately be left up to the courts. The complainant was concerned that the department redacted certain financial information based on federal and state privacy rules. Because the department did not provide a citation to the rule(s) it relied on, this office requested that it update its response to provide a specific citation. Based on the foregoing, no further enforcement action was required.

### **Kansas Department of Corrections**

Complaint: An individual contacted this office alleging that the KDOC violated the KORA when it failed to respond to his records requests.



## Kansas Open Records Act Complaints, continued

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Resolution: This office requested the individual complete a complaint form as required by K.S.A. 45-252(a). The complainant did not respond to this request. No further action was taken on the complaint.

### **Kansas Department of Corrections, El Dorado Correctional Facility and RW Sapien**

Complaint: An individual filed a complaint with this office alleging that the KDOC – EDCF violated the KORA when it failed to provide him with the requested records and by charging an unreasonable fee.

Resolution: Upon investigation, this office learned that complainant submitted a Form 9 (inmate request for assistance) to the acting warden asking for records under the KORA. The request was forwarded to the individual assigned to respond to KORA requests. The KORA compliance officer provided a response within three business days of receiving the request. Although a portion of the complainant's request asked for information and not records, the compliance officer was willing to research and prepare a record containing the information the complainant was seeking, as well as the requested records. However, as permitted by the KORA, the compliance officer sought advance payment of the costs associated with responding to the KORA request. The complainant was advised that he would receive the information and records upon payment of the required costs. Based on the foregoing, there was no violation of the KORA, and no further enforcement action was taken.

### **Kansas Department of Corrections, El Dorado Correctional Facility, Robert Sapien and Dan Schnurr**

Complaint: An individual filed a complaint with this office alleging that EDCF violated the KORA when it failed to provide him with records concerning his administrative segregation status and any investigations related to him.

Resolution: Upon initial review of the complaint, this office determined that the complainant failed to sign the complaint under penalty of perjury as required by law. Before proceeding with review, the complainant was required to comply with the statutory requirements for submission of a complaint to this office. Upon further review, this office determined that EDCF acknowledged complainant's KORA request within three business days as required. However, EDCF failed to take further action to provide the records requested. Recognizing that it did not respond to the complainant's KORA request as required, EDCF offered to settle the complaint by providing the complainant with copies of the records he requested; it also agreed to waive any fees it might have been permitted to impose in responding to the complainant's request. This office requested and received confirmation that EDCF provided complainant with the records. This was consistent with the remedy sought by the complainant. Because EDCF provided the records free of charge, no further formal enforcement action was taken.

### **Kansas Department of Corrections, Lansing Correctional Facility and Brett Peterson**

Complaint: An individual filed a complaint with the office alleging that the KDOC violated the KORA when it failed to respond to his records request.

## **Kansas Open Records Act Complaints, continued**

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Resolution: This office requested the complainant provide copies of the KORA request and any supporting documents. The complainant did not provide the requested information by the deadline, so the case file was closed. After the deadline passed, the complainant provided some of the requested information, which showed that he received a response to his KORA request. The complainant was dissatisfied because the records did not contain all the information he expected. Based on a review of the information provided, the KDOC provided the records it had available, even though they did not contain all the information that the complainant expected. The KORA requires a public agency to provide a requester with records that are in existence at the time of the request. It does not require a public agency to obtain records from another agency to respond to the request or to create records that contain all the information a requester believes should be available. Based on the foregoing, the KDOC's actions were consistent with the KORA, and no further enforcement action was warranted.

### **Kansas Department of Corrections**

Complaint: An individual filed a complaint with this office alleging that the KDOC violated the KORA when it failed to provide the requested records and charged an unreasonable fee.

Resolution: Upon investigation, this office learned that the complainant submitted a Form 9 asking to know the current population at the El Dorado Correctional Facility (EDCF). Although the KORA does not require a public agency to answer questions seeking information, EDCF staff treated the request for information as a KORA request, identified a one page record that contained the information, and requested advance payment of the fee to make the record available. This is consistent with the requirements of the KORA. As for the fee charged to make the record available to the complainant, the fee was \$.25 per page. The KORA provides that a fee for copies of public records which is equal to or less than \$.25 per page "shall be deemed a reasonable fee." Based on the foregoing, there was no violation of the KORA, and no further enforcement action was taken.

### **Kansas Department of Corrections**

Complaint: An individual contacted this office alleging that the KDOC violated the KORA by failing to provide the requested record and charging an unreasonable fee.

Resolution: The individual submitting the concern did not complete the complaint form required by K.S.A. 45-252(a). Although this office requested the individual complete and return the complaint form, he did not do so. Because the individual did not complete and return the complaint form required by law, no further action was taken.

### **Kansas Department of Corrections and Robert Sapien**

Complaint: An individual filed a complaint with this office alleging that the KDOC violated the KORA when it failed to provide a response after its initial acknowledgment.

Resolution: Upon review, this office determined that while the KDOC provided an initial response, there was some delay and miscommunication concerning how the individual could obtain the records. Because of this, the KDOC offered to informally resolve the matter

## Kansas Open Records Act Complaints, continued

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by providing the complainant with copies of the requested records free of charge. This office requested and received confirmation that KDOC provided the complainant with the records free of charge. This was consistent with the remedy sought by the complainant. Because the records were provided free of charge, no further enforcement action was necessary.

### **Kansas Department of Corrections, State of Kansas, Robert Sapien and Dan Schnurr**

Complaint: An individual filed a complaint with this office alleging that the KDOC violated the KORA by not providing all the records he expected to receive in response to his request.

Resolution: Upon review, this office determined that the KDOC provided eleven (11) unredacted pages of records in response to part one of the complainant's KORA request, which he acknowledged receiving. Investigation also revealed that the complainant did not receive a response to the second part of his request because it was phrased as a request for information, legal advice and/or legal research. A public agency is not required to answer questions asking for information or to conduct/provide legal research. Based on the foregoing, there was no violation of the KORA and no further enforcement action was taken.

### **Robert Sapien, Policy Compliance Officer, and El Dorado Correctional Facility**

Complaint: An individual filed a complaint with this office alleging that EDCF violated the KORA when it failed to provide him with records related to his administrative segregation status.

Resolution: Upon review, this office first determined that individuals are not included in the definition of a public agency, and thus cannot individually be held responsible for the actions of a public agency. With regard to the complainant's other concerns, this office determined that complainant did not send his undated KORA request to EDCF's Freedom of Information Officer, who was designated to respond to KORA requests. This delayed the agency's response. When the undated request finally reached the EDCF FIO, he responded within three business days. A follow up response from the EDCF FIO indicated that as to the first part of the complainant's KORA request related to administrative segregation, he did not have access to the requested records. The EDCF FIO further indicated that since the complainant had already received copies of the records he was asking for as a part of normal prison procedures, he could submit a request to his Unit Team for copies of the records. This office determined that EDCF's response to the first part of the complainant's records request was inconsistent with the KORA's requirements. In the second part of his KORA request, the complainant asked for copies of the laws and rules that authorized his placement in segregation. This office determined that as phrased, the complainant was actually asking for the agency to answer questions asking for information or to conduct legal research. A public agency must only provide access to or copies of records that are in existence at the time of the request, subject to any statutory restrictions. The EDCF FIO did direct the complainant to the relevant agency rule that generally describes the purpose of administrative segregation and the reasons for any such placement. The EDCF's response to the second part of complainant's records request was consistent with the

## **Kansas Open Records Act Complaints, continued**

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purpose and intent of the KORA. Recognizing that its response to the first part of complainant's KORA request was inadequate, EDCF offered to and did provide complainant with the requested records free of charge. This was consistent with the remedy sought by the complainant. This office requested and received confirmation that EDCF provided complainant with the records. Because EDCF provided the records free of charge, no further formal enforcement action was taken.

### **State of Kansas, Department of Corrections, Dan Schnurr, Dustin Randolph and Robert Sapien**

Complaint: An individual filed a complaint with this office alleging that the KDOC and various prison officials violated the KORA when they denied his request for the "kick out list" and copies of statutes or polices that authorized the KDOC to use disciplinary segregation to cause the individual "atypical and significant hardship."

Resolution: Upon investigation, this office first determined that individuals are not included in the definition of a public agency, and thus cannot individually be held responsible for the actions of a public agency. With regard to the complainant's other concerns, this office determined that the so-called "kick out list" being sought is an informal or slang reference to the daily listing of recommendations for cellhouse moves or releases. It contains identifying information about inmates, as well as other security-related information collected by prison officials about inmates. Because it is security related, there is the potential for physical or other harm to inmates or staff if such information is released or shared. The KDOC treats the information as confidential as it has the potential to affect the safety and security of staff and inmates. The KORA does not require all categories of records to be disclosed. One such category concerns security information and procedures. Such information or knowledge is used to safeguard a public agency, building or facility. In this instance, the security information contained in the "kick out list" that complainant was seeking helped to protect staff and inmates from harm or damage, and/or to prevent actions that could jeopardize the safety and security of the prison facility where complainant was located. In light of the foregoing, this office determined that the KDOC met its burden to show that the exemption to disclosure set forth in K.S.A. 45-221(a)(12) concerning security information and procedures applied to the "kick out list," and that it was not required to be disclosed. As to the complainant's request for copies of statutes or polices concerning his disciplinary segregation status, this office concluded that the complaint's request as phrased was more in the nature of a request for legal research or asking for answers to questions, than a request for records, thus the KDOC's response that it was not required to provide legal research was consistent with the KORA. Finally, this office determined there was no basis to grant complainant's request for attorney fees or a civil penalty since there was no KORA violation, and no district court action was filed; only a district court can award attorney fees. Because the KDOC did not violate the KORA, no further enforcement action was taken.

## Kansas Open Records Act Complaints, continued

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### **Kansas Department of Health and Environment**

Complaint: An individual filed a complaint with this office alleging that the KDHE violated the KORA when it declined to provide the identity of the “anonymous individual” who filed a complaint about livestock wastewater runoff.

Resolution: Upon review of the complaint, it was unclear if the complainant ever made a KORA request for the records. The complainant did not respond to a request for further information, including supporting documentation. No further action was taken on the complaint.

### **Kansas Department of Labor**

Complaint: An individual contacted this office alleging that KDOL failed to respond to his request for records.

Resolution: The individual submitting the concern did not complete the complaint form required by K.S.A. 45-252(a). Although this office requested the individual complete and return the complaint form and any supporting documents, he did not do so. Because the individual did not complete and return the complaint form required by law, no further action was taken.

### **Kansas Department of Revenue**

Complaint: An individual filed a complaint with this office alleging that KDOR improperly denied his KORA request because it did not provide a privilege or exemption log; the individual also alleged it was unreasonable for the department to require a written request for records.

Resolution: Upon review, this office determined that KDOR properly denied a portion of the KORA request in part because some of the requested records were privileged attorney-client communication or preliminary drafts that were not disclosed in an open meeting or mentioned in the agenda for an open meeting and thus were not required to be disclosed. This office concluded while a privilege log might be required in litigation, the KORA simply requires a public agency to provide, upon request, a written statement of the grounds for denial that cites the specific provision of law relied on to deny the request. The department also properly denied a second portion of the KORA request because as phrased, it was more in the nature of a request for information and not records; the KORA does not require a public agency to answer questions or create a document to respond to a KORA request. With regard to the individual’s concern that he was improperly required to complete the department’s written KORA request form, this office determined that the department’s request to complete the form was made after some records were provided. While the KORA permits a public agency to require a written request, it cannot require that the request be made in any particular form. While KDOR’s actions were generally consistent with the KORA, this office did take steps to remind the department about the KORA’s requirement related to the form of a KORA request. No further enforcement action was necessary.

## **Kansas Open Records Act Complaints, continued**

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### **Kansas Highway Patrol**

Complaint: An individual filed a complaint with this office alleging that the KHP violated the KORA when it failed to respond to a request for records.

Resolution: This office requested that the complainant provide additional information about her complaint. The complainant did not respond to this request. No further action was taken on the complaint.

### **Kansas Office of Information Technology Services (OITS)**

Complaint: A member of the media filed a complaint with this office alleging that OITS violated the KORA when it failed to provide timely and detailed information about the reason for delay in fulfilling her records request and earliest time when records would become available; the individual also believed that OITS did not cite the legal grounds for withholding records within three business days of receiving a request for that information.

Resolution: Upon review, this office determined that OITS responded to the complainant's request within three business days, and thereafter regularly communicated with complainant about the status of her request, promptly replied to any inquiries, and kept her apprised about the efforts to respond to the request, including efforts to search for records and consult with legal counsel about the request. Because the OITS was both timely and detailed in its communications, this office determined that the efforts to keep the complainant apprised about the status of her request complied with the KORA, even if OITS could not provide an exact date the records would be available. Additionally, this office determined OITS complied with the KORA by citing the specific provisions it relied on to withhold records. Based on the foregoing, there was no violation of the KORA and no further enforcement action was taken.

### **Kansas Secretary of State's Office**

Complaint: A member of the media filed a complaint with this office alleging that the KSOS violated the KORA when it failed to timely provide records, a detailed explanation of the reason for the delay in fulfilling the request and earliest time when records would become available, and failed to provide all the records requested.

Resolution: Upon review, this office determined that the KSOS timely acknowledged the KORA request. The request involved a response to a Department of Justice letter and copies of instructions or guidance from KSOS to state election offices and officials about how to ensure accurate and current voter registration lists. According to the KSOS, the reason for the delay was that the records custodian, who was relatively new and inexperienced in handling KORA matters, did not know about one of the records being requested. Additionally, the records custodian was somewhat confused about what record was being requested since the complainant's request referred to a news article. When this was clarified, the records custodian located one record, but the other record was not yet in existence, although it was anticipated to be created shortly. Rather than advise the complainant there were no records, the records custodian waited until the record (a letter) was created, then provided the records to complainant; as explained,



## Kansas Open Records Act Complaints, continued

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the KSOS felt this was more in keeping with the spirit of the KORA than to say there was no record, especially when it was clear a record was being created in the normal course of business. Thus, the records custodian could not explain when the record would be available. The complainant was also concerned that the KSOS did not respond to a portion of her request. Rather than bring this to the attention of the KSOS, the complainant filed a complaint. The KSOS promptly provided the other records sought when this office brought this oversight to its attention. Because no violation of the KORA was identified, no further enforcement action was required. However, this office did remind the KSOS about the provisions set out in K.S.A. 45-218(d), and the importance of seeking clarification of a KORA request when necessary.

### **Kansas Secretary of State's Office**

Complaint: An individual filed a complaint with this office alleging that the KSOS violated the KORA when it failed to respond to an emailed request for records.

Resolution: Upon investigation, this office learned the complainant emailed his request to the KSOS general inquiries account, where it was not immediately identified as a KORA request. After a delay, the email was opened and immediately forwarded to the KSOS records custodian for response. The records custodian acknowledged the request and provided a response to the request. Based on the complainant's experience, the KSOS updated its KORA brochure to ensure it clearly stated where to send KORA requests to ensure prompt handling. Additionally, the KSOS reviewed its KORA processes, website, and handling of email directed to the general inquiries email account to determine if updates were required. Based on the foregoing, no further enforcement action was taken.

### **Kansas Secretary of State's Office**

Complaint: An individual filed a complaint with this office alleging the KSOS violated the KORA when it failed to provide a response to her records request.

Resolution: Upon investigation, this office learned that the KSOS had no record of the complainant's request. Additionally, the supporting documentation submitted by the complainant suggested that she may have inadvertently placed her own email address in the address section of the email alleged to have been sent to the KSOS. Once the KSOS received the KORA request from this office, it promptly responded to the complainant. This office contacted the complainant to determine if perhaps she made an inadvertent error when addressing the email. The complainant did not respond to this inquiry, but indicated that she received the requested records and wished to dismiss her complaint. Based on the foregoing, no further enforcement action was taken.

### **Kansas State University**

Contact: An individual filed a complaint with this office alleging that KSU violated the KORA when it failed to respond to a letter sent to the university president asking for records.

Resolution: This office contacted KSU regarding the complaint. KSU responded that upon receipt of the complainant's letter, she was advised how to make a KORA request to the

## **Kansas Open Records Act Complaints, continued**

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university's designated records custodian. The complainant did not follow through and make a KORA request. At the request of this office, the university searched for any records that might be responsive to the complainant's request for emails from a former employee's email account. KSU did not discover any responsive records. This was due in large part to the fact that the university follows an established process for removing email accounts from its servers. In this instance, the email account was deleted some 163 days prior to complainant's letter to the university president in February 2017. This office was unable to determine that the university violated the KORA, therefore no formal enforcement action was taken.

### **Office of the Governor**

Complaint: A member of the media filed a complaint with this office alleging that the governor's office violated the KORA when it failed to provide timely and detailed information about the reason for delay in fulfilling the request and earliest time when records would become available; the individual also believed that the governor's office did not cite the legal grounds for withholding records within three business days of receiving a request for that information.

Resolution: Upon review, this office determined that the governor's office responded to the complainant's request within three business days. The request involved searching for and reviewing several thousand pages of records. The governor's office advised that the records would be provided "ASAP." Based on the totality of the circumstances, including the nature and volume of the responsive records, the actions of the governor's office were consistent with the KORA. The complainant also believed the governor's office failed to provide a written statement of the grounds for denial upon request as provided by K.S.A. 45-218(d). The complainant made the request for the statement in her initial request for records. At the time she made the request for the written statement, the governor's office had made no decisions about whether to deny the complainant access to the records. When the governor's office made that decision, it provided a written statement referencing the exemptions to disclosure set out in K.S.A. 45-221 that it relied on. This office concluded that the statement was timely and complied with the KORA. Because no violation of the KORA was identified, no further enforcement action was required.

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## **COMPLAINTS AGAINST CITIES**

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### **City of Bennington**

Complaint: An individual filed a complaint with this office alleging that the city violated the KORA when she was denied the ability to inspect meeting minutes at city hall.

Resolution: Upon review, this office determined additional information was needed, including whether the complainant mentioned the KORA at the time she contacted city hall. The complainant stated she did not. This office contacted the city for additional information. According to the city, although the complainant called and asked if city hall would be open, she did not state the reason for her inquiry or mention that she



wanted to review meeting minutes; the complainant also did not mention the KORA during her phone call. The key to triggering the KORA's provisions is the receipt of a request that clearly indicates its provisions are being invoked. The complainant conceded she did not mention the KORA when she asked if city hall was going to be open. Because it is clear that the complainant did not invoke the KORA, the city did not violate the KORA and no formal enforcement action was required.

### **City of Blue Rapids**

Complaint: The publisher of a newspaper filed a complaint with this office alleging the city violated the KORA when it did not provide the records he requested.

Resolution: Upon review of the complaint and additional documentation provided by complainant, this office determined that complainant submitted at least three separate KORA requests to the city. In his first request, complainant sought a monthly financial statement, a monthly arrest report, a monthly code violation report, and the outstanding fine balances for the city. The city did not have a monthly financial statement. However, because the complainant is also a city council member, the clerk provided records about the city's finances, and created records to respond to the complainant's other requests, even though this is not required by the KORA. In his second request, the complainant sought monthly police blotters or blotter type information, and records concerning police activities and code enforcement; he also indicated he wanted to receive them "continuously." The city did not have a police blotter, but advised the complainant he could review the tickets filed with the municipal court by making arrangements with the court clerk. The city was uncertain what complainant meant when he referred to police activities and indicated that any responsive records might be criminal investigation records. Finally, the city advised complainant it did not create or maintain a code enforcement report, thus had no records to provide. As to the request to receive the records "continuously," the KORA does not require a public agency to provide records based on a "standing request," and does not cover records not yet in existence. Thus a "standing request" for records was not required to be honored. Complainant's third KORA request again sought police blotter information on an "on-going basis." Although the city did not create a police blotter, and was not required to honor a "standing" or ongoing request for information, it offered the complainant access to traffic tickets filed in municipal court and the front page of the Kansas Standard Offense Report as a way to satisfy the request. The complainant declined this offer as the information was not contained in the format he wanted. Complainant also sought the "Officer's Daily Report." Following review of the reports, this office concluded that the daily report was a handwritten log containing confidential communications between officers; it included information concerning ongoing criminal investigations, as well as criminal history record information. Importantly, the daily report did not contain "blotter type information," and thus it was not responsive to complainant's KORA request. This office determined that the city's response to this KORA request was not made within three business days as required, however, this was due in part to the fact that the complainant did not submit his request to the designated records custodian at the police department. This office concluded

## **Kansas Open Records Act Complaints, continued**

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that the city's actions were consistent with the KORA and no formal enforcement action was warranted.

### **City of Garden City**

Complaint: An individual filed a complaint alleging that the city violated the KORA by failing to provide curb elevation reports, compaction reports, and plan-profile sheets for streets around the city.

Resolution: Upon review of the complaint and receipt of additional documentation from the city, this office determined that complainant submitted at least five separate KORA requests to the city. With regard to one of his requests, the city reported that it never received the records request. Because the city states it never received this request, no response in compliance with the KORA was required. With regard to the second request, the complainant stated that he received the records responsive to this request; because he received the records, the KORA was not violated. With regard to his remaining three requests, the complainant received the records he requested, but they were outdated or not the records he expected. A public agency can only provide a requester with existing records in its possession. It is not a violation of the KORA if the requested records fall short of a requester's expectations. This office concluded that the city's actions were consistent with the KORA and no formal enforcement action was warranted.

### **City of Independence**

Complaint: An individual filed a complaint alleging that the city violated the KORA by denying her request for, among other records, contingency plans "for the relocation of city offices and staff should city hall be rendered useless due to natural or manmade disasters" and "for the provision of water to Independence residents should the City water facilities be rendered useless due to natural or manmade disasters."

Resolution: Upon investigation, this office learned that the city received and responded to the request within three business days as required. The city denied complainant's request and asserted the provisions of K.S.A. 45-221(a)(20) concerning notes, drafts and recommendations, to support its denial. The city conceded that the city attorney inadvertently cited the wrong statute when advising the city clerk on a response to the KORA request, and the clerk carried the mistake forward to its response. Although the city cited the wrong statute, it also stated it was denying the request because "such plans deal with security issues and disclosure would jeopardize security of the city's buildings and facilities." The proper statutory references should have been K.S.A. 45-221(a)(12) and/or (45). The purpose of these provisions is to protect from disclosure records concerning emergency or security information or procedures of a public agency. Such information is used to protect public facilities, personnel, systems, and equipment. The release of such records and information might expose security plans used to shield or maintain the integrity of systems, facilities and equipment; the individuals responsible for acting in an emergency; system vulnerabilities; the type of facilities or equipment used in such systems; and actions to be taken in the event of an emergency, including safeguarding the continuity of government. Complainant's

request for contingency plans necessarily involved the city's response to such things as floods or tornados, as well as acts of terrorism, either foreign or domestic. As such, this office determined these provisions of the KORA provided a discretionary basis for the city to refuse to disclose the requested records. Thus, although the city made a typographical mistake and gave the wrong statutory reference, its reason for denying complainant's request was proper. Complainant also raised a concern that the city failed to redact the records as required. The city argued there was no practical way to redact the records since the entire content concerned emergency plans and planning. After much consideration, this office agreed that redaction was simply not practical. Given the nature of the records, redaction, if attempted, might leave isolated words and phrases that might still provide sufficient information to assist someone intent on harming the citizens of Independence if the information were to be released. In light of the totality of the circumstances, this office found that the city did not violate the KORA when it did not redact the emergency plans and provide a redacted version of the records. However, because public agencies must honor their obligations under the KORA to review and redact public records so that redacted versions of the records can be released if possible, this office reminded the city of its redaction obligations under the KORA. No further formal enforcement action was necessary.

### **City of Independence**

Complaint: An individual filed fourteen (14) separate complaints alleging that the city violated the KORA by failing to provide the date on which records would be available; there was an unreasonable delay in providing records because they were not provided on the third business day; assessed a fee for a record that was posted on the city's website; failed to provide requested records; and unreasonable fees.

Resolution: Upon investigation, this office determined that the city did not fail to provide the date on which records would be available because the date the records would be available depended on when the complainant would be paying the estimated fees requested to make the records available. The KORA permits a public agency to request advance payment of a fee for providing access to or furnishing copies of public records. This includes the cost of staff time to make the records available. Having reviewed the complaints where this was a concern, this office determined the city's actions were generally consistent with the KORA, but took steps to remind the city that where it cannot provide the records within three business days because it is seeking advance payment of fees, it should make all reasonable efforts to provide the date when the records will be available after payment is received. With regard to complainant's allegations that the city did not provide records within three business days, a variety of reasons may interfere with the ability to do so, including but not limited to, the need to seek clarification of a request or search for records, as well as await the payment of fees sought in advance of providing the records. After reviewing the city's response, its actions were consistent with the KORA in this regard; any delay in providing records was not excessive or unreasonable based on the facts. Complainant was also concerned that the city assessed a fee for providing a record that was posted on the city's website. A public agency must respond to a KORA request. While the city could have directed the complainant to its website, it is also consistent with the KORA to

## **Kansas Open Records Act Complaints, continued**

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take a request as it is submitted and provide the requested record, as well as charge for costs necessary to make the record available. This is because making a KORA request triggers certain requirements, and a public agency must respond in accordance with its dictates. Based on this, the city's response was consistent with the KORA. Complainant was advised in future requests to ask if the records are already available on its website so that she could access them on her own without incurring further costs. Complainant was also concerned that on several occasions, the city did not provide her with requested records. On one occasion, the complainant withdrew her request because she did not want to pay the associated fees. On another occasion, complainant's request was more in the nature of a question about the basis for the city's ability to charge fees; the city later provided a statutory reference. On a third occasion, it appeared that the city inadvertently failed to provide complainant with a copy of one record, which she later secured on her own by viewing records on the city's website. It did not appear that the city was aware that it may have inadvertently left out a record. Complainant was encouraged to bring such oversights to the attention of city staff so that it could promptly provide the records. On two other occasions, the city did not provide records because it did not have them. A public agency cannot provide records that it does not have. Finally, with regard to the complainant's concern regarding excessive fees, including a so-called "computer maintenance fee," the city had received a prior concern about such fees. This office consulted with the city attorney and learned that the city was in the process of reviewing and revising its ordinance related to accessing records and fees. The city attorney provided copies of the ordinances for this office to review and was receptive to comments suggesting clarification of the language to ensure that only the actual cost of providing records was charged as provided by the KORA. This office determined that the original fee ordinance was not consistent with the KORA, and the city agreed to take remedial action to resolve this concern. In an unrelated case, the city agreed to review its "computer maintenance fee" and refund any such fees that were paid; complainant received a refund as a part of this review. With regard to charges for staff time spent in responding to complainant's KORA request, the city was able to support each of these charges. Based on the foregoing, no further formal enforcement action was necessary.

### **City of Independence**

Complaint: An attorney filed a complaint with this office on behalf of a member of the media alleging that the city violated the KORA by charging a \$25 "computer maintenance fee" for an emailed copy of the city manager's contract. The media member declined to pay this fee, obtained a paper copy, and then filed this complaint.

Resolution: Upon investigation, this office learned that the "computer maintenance fee" referred to by the city was more in the nature of a recoupment of overhead costs rather than being used to recoup the actual cost of making the public record available. This office also learned that the complainant did not pay the "computer maintenance fee" and did not challenge the fee for access to a paper copy of the record. Under the KORA, the fees for copies of records cannot exceed the actual cost of furnishing copies, including the cost of staff time required to make the information available. Likewise, in the case

## Kansas Open Records Act Complaints, continued

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of fees for providing access to records maintained on computer facilities, the fees charged can only include the cost of computer services, including staff time required to respond to the request. At the request of this office, the city reviewed and amended its ordinance pertaining to procedures and fees for the production of public records, and removed any reference to the “computer maintenance fee.” Because the city took the requested remedial action, this office declined to pursue a formal enforcement action to resolve this matter.

### **City of Lawrence**

Complaint: An individual filed a complaint with this office alleging that the city violated the KORA when it did not provide the records he requested.

Resolution: Upon review, it was determined additional information was needed to clarify whether the complainant submitted his records request under the provisions of the KORA. This office requested the complainant clarify the nature of the complaint and provide supporting documentation. The complainant did not respond to the request, therefore, no further enforcement action was taken.

### **City of Lenexa**

Complaint: An individual filed a complaint with this office alleging that the city violated the KORA when it failed to provide him with certain records he requested.

Resolution: Upon review, this office determined that the city timely responded to the complainant’s KORA request, and continued to work with him to clarify and narrow the request to reduce the expected costs of the original broad request spanning all county departments over a period of 13 years. The city provided an estimate of fees, but the complainant never responded. Because the city’s response complied with the KORA, there was no violation, and no enforcement action was required.

### **City of McCune**

Complaint: An individual filed a complaint with this office alleging the city violated the KORA by telling him to contact the city attorney when he attempted to make a records request.

Resolution: Upon review, this office determined that communication difficulties impacted the ability of city staff to understand what the complainant was seeking. Because of this, the city asked the complainant to call the city attorney to see if he could provide assistance. Because it was not clear that the KORA had been invoked, this office could not conclude that the city violated the KORA, and no formal enforcement action was required.

### **City of Redfield/Mayor Ed Guss**

Complaint: An individual filed a complaint with this office alleging that the city violated the KORA when it failed to respond to her records request.

Resolution: This office requested the complainant clarify the nature of the complaint and submit any available supporting documentation. The complainant did not respond to the request, therefore, no further action was taken.

## **Kansas Open Records Act Complaints, continued**

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### **City of South Hutchinson Police Department**

Complaint: A member of the media filed a complaint with this office alleging that the SHPD violated the KORA when it failed to respond to his records request.

Resolution: Upon investigation, this office determined that the SHPD violated the KORA by failing to respond to the request within three business days, instead directing the records clerk “not to fulfill the request until advised to do so.” The SHPD also failed to respond to the complainant’s inquiries regarding his request. Approximately 53 days after receiving the KORA request, the SHPD directed the records clerk to only release page one of the Kansas Standard Offense Report. The investigation also concluded that the SHPD withheld records that were responsive to the KORA request. At the conclusion of the investigation, the SHPD signed a Consent Order admitting that it violated the KORA. Under the terms of the Consent Order, SHPD staff, including its freedom of information officer, records custodians, and other staff responsible for complying with the KORA were required to receive at least one hour of training on the KORA, comply with the requirements of the KORA in responding to future requests, pay a \$100 civil penalty, and provide any further records that were responsive to the complainant’s request. The SHPD promptly complied with the requirements of the Consent Order.

### **City of Wichita Police Department**

Complaint: An individual filed a complaint with this office alleging that the WPD violated the KORA when it failed to provide the requested records and because the estimated fee for providing the records was unreasonable.

Resolution: Upon investigation, this office learned that the WPD located records concerning one incident and sent a letter to the complainant requesting advance payment of fees as permitted by the KORA. The complainant did not pay the requested fees. The WPD was unable to locate any records concerning the second incident. The complainant was advised that the WPD would provide the records as soon as he paid the requested fees. The fees were not excessive based on the number of records that were identified as responsive to the complainant’s request. Based on the foregoing, there was no violation of the KORA, and no further enforcement action was taken.

### **Coffeyville Police Department**

Complaint: An individual filed a complaint with this office alleging that the CPD violated the KORA when it did not provide all the records he expected to receive.

Resolution: Upon review, this office determined that the CPD provided the complainant with the records that are open under law, but was unable to locate one record due in part to a temporary location move to accommodate construction. Records staff indicated to the complainant they would continue to search for the requested record. Although the KORA establishes procedural safeguards, it does not establish record retention requirements. It also does not guarantee that a public agency will have the requested records when the request is made. It is not a violation of the KORA to be unable to



## Kansas Open Records Act Complaints, continued

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locate the records a requester is seeking. Because there was no violation based on the facts presented, no formal enforcement action was required.

### **Kansas City, Kansas Police Department (Unified Government)**

Complaint: An individual filed a complaint with this office alleging that the KCKPD violated the KORA when it did not receive a response to her records request after the initial acknowledgment.

Resolution: Upon review, this office determined that the KCKPD did provide an initial response within three business days as required, but admitted that due to internal miscommunication and a new records response and tracking system, it failed to provide a final response. This office requested that the KCKPD take remedial action to ensure this problem did not arise in the future, as well as provide the response it should have provided following its search for records. Additionally, due to the substantial delay, this office requested the KCKPD give consideration to waiving or reducing the fees incurred for reviewing and redacting the records. The KCKPD promptly complied with the request for remedial action and substantially reduced the fee for review and redaction of more than 2,000 pages of records. No further enforcement action was necessary.

### **Olathe Police Department**

Complaint: An individual filed a complaint with this office alleging that the police department violated the KORA by failing to provide her with all contracts and related documents for any social medial surveillance software.

Resolution: This office consulted with the OPD and requested further information concerning the exemptions to disclosure it cited. Following an independent assessment and further consultation with the OPD, it agreed to provide the complainant with copies of the requested records. Because the police department agreed to provide the records, no further formal enforcement action was necessary.

### **Park City Municipal Court**

Complaint: An individual filed a complaint with this office alleging that the municipal court violated the KORA when it denied her request to photograph records because she could not pay the requested fees.

Resolution: This office requested the complainant clarify the nature of the complaint and submit any available supporting documentation. The complainant did not respond to the request, therefore, no further action was taken.

### **Peabody Police Department**

Complaint: An individual filed a complaint with this office alleging the PPD violated the KORA when it failed to allow her to review police reports about herself.

Resolution: This office requested the complainant provide detailed information and supporting documentation concerning the alleged violation. The complainant did not respond to this request. No further action was taken on the complaint.

**COMPLAINTS AGAINST COUNTIES**

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**Allen County Sheriff's Office**

Complaint: An individual filed a complaint with this office alleging that the sheriff's office violated the KORA when it failed to provide her all the records she believed existed.

Resolution: Upon review, this office determined that the complainant did not mention or refer to KORA in her request for records. Nevertheless, the sheriff's office timely responded and provided the available records that were responsive to her request. One report was not provided because it was not responsive to her request for official reports concerning criminal activity at her home; the report that was not provided concerned a sheriff's office callout concerning protective custody issues. Additionally, other records did not exist because the complainant routinely attempted to make official reports using the sheriff's office "tip line." Because this office did not find a violation of the KORA, no further enforcement action was taken.

**Allen County Sheriff's Office**

Complaint: An individual filed a complaint with this office alleging that the sheriff's office violated the KORA when it denied her access to records concerning her mother's death.

Resolution: Upon review, this office determined that the sheriff's office responded to the complainant's request for records, even though the KORA was not mentioned. The request for records concerned the investigation into the death of the complainant's mother. Upon review, it was determined that the records being sought were criminal investigation records within the meaning of the KORA, and with one exception, were not required to be released. The one exception involved the Kansas Standard Offense Report, certain portions of which are open. The failure to provide the portion of the records that were clearly open and to consider redaction violated the KORA. Based on the totality of the circumstances, this office determined that while formal enforcement action was not required, remedial action was necessary to ensure future KORA compliance. This included providing the individual with records that were clearly open, considering whether redaction was possible, and providing any redacted records to the individual. Because the sheriff's office promptly complied with the request for remedial action, no further enforcement action was necessary.

**Butler County Sheriff's Office**

Complaint: An individual contacted this office alleging the sheriff's office violated the KORA by failing to provide access to or copies of records in its office.

Resolution: The individual submitting the concern did not complete the complaint form required by K.S.A. 45-252(a); and did not respond to a request to do so. No further enforcement action was taken.



**Butler County Sheriff's Office / Butler County Detention Facility**

Complaint: An individual filed a complaint with this office alleging the detention facility violated the KORA when it failed to respond to a KORA request through the detention facility's JailATM computer system after its initial acknowledgment.

Resolution: Upon review, this office determined that detention facility staff acknowledged the complainant's request within three business days as required by the KORA. However, the complainant replied to this acknowledgment with a question about another matter; once the detention facility officer responded to this second inquiry, he closed the "workflow step" in the JailATM system, which inadvertently closed the KORA request as well. Because of this, the complainant did not receive a response to his KORA request. Recognizing this inadvertent mistake, the detention facility offered to allow the complainant to review the records in person. However, the complainant had already been transferred to another facility. Because of this, the detention facility agreed to mail copies of the records to the complainant free of charge. This office requested and received confirmation that the detention facility promptly provided the requested records to the complainant. Based on the detention facility's response, no formal enforcement action was taken.

**Jefferson County Sheriff's Office**

Complaint: A member of the media filed a complaint with this office alleging that the sheriff's office violated the KORA when it denied his request for records concerning two individuals covering a period of between 20 and nearly 40 years and asserted that it placed an unreasonable burden on the office.

Resolution: Upon review, this office determined in order to respond to the request, the sheriff's office would be required to search a wide variety of records, including booking files, criminal history files, and offense reports. The records were stored in two locations in at least 86 bankers boxes; some of the boxes had name or case number indices, but others did not. The bulk of the records were in paper format. While the JCSO has 51 employees, only seven are administrative staff; the remainder are deputies. Due to workload, the current employees could not be spared to conduct the search, requiring temporary staff to be hired to respond to the request. A good faith effort to search for the two names would require each piece of paper to be reviewed. Many of the records would also require redaction because the information they contain is confidential under Kansas law. The fact that complying with the open records request would consume both time and personnel resources is not, standing alone, evidence of an unreasonable burden. However, here, the KORA request spanned anywhere from 20 to nearly 40 years. Even as amended, the search involved paper records. Based on the totality of the circumstances, this office concluded that the sheriff's office presented clear and convincing evidence that identifying, retrieving, reviewing and redacting the records imposed an unreasonable burden on it within the meaning of the KORA. In light of the foregoing, this office did not find a violation of the KORA, and no further enforcement action was taken.

## **Kansas Open Records Act Complaints, continued**

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### **Leavenworth County**

Complaint: An individual filed a complaint with this office alleging that the county violated the KORA by charging excessive fees to respond to her KORA request.

Resolution: Upon investigation, this office learned that the individual paid the county's requested fee of \$300 to provide records concerning the county's pay plan schedule and pay plan worksheet. The individual received five pages of records following payment. After receiving these records, the individual complained to the county, including the county counselor's office, about the fee, in part because the records provided were publicly discussed during an open meeting; the individual also requested a full refund. The individual fulfilling the request provided the county counselor with information concerning how the fees were calculated. The county counselor concluded the fees were unreasonable and advised that the individual would receive a corrected invoice, and that he was working to resolve one legal issue. The individual advised the county counselor this was "totally acceptable." Following further review, the county worked to redact some of the records, finalize others that were in draft form and provided the individual with the records in electronic form and free of charge; the county also refunded the \$300. Because the individual did not request a remedy, and because the county had already taken the remedial action this office would have requested, this office declined to pursue formal enforcement action to resolve this matter.

### **Leavenworth County Board of County Commissioners**

Complaint: An individual filed a complaint with this office alleging that the BOCC violated the KORA when it failed to provide her with the records she requested.

Resolution: Upon review, it was determined that additional supporting documents were needed. The complainant did not respond to a request to provide the documentation. No further enforcement action was taken.

### **Leavenworth County Sheriff's Office**

Complaint: An individual filed a complaint with this office alleging that the sheriff's office violated the KORA when it denied a request for records, but failed to provide a reason for the denial.

Resolution: Upon review, it was determined that additional information, was needed. The complainant did not respond to a request to provide the documentation. No further enforcement action was taken.

### **Johnson County Clerk's Office and Johnson County Legal Department**

Complaint: An individual filed a complaint with this office alleging that the clerk's office violated the KORA when it did not provide him with all the records he requested and that are required by law to be filed in the clerk's office.

Resolution: The complainant submitted the complaint to this office, but failed to sign the complaint as required by K.S.A. 45-252(a). The complainant did not respond to a request to sign the complaint form and provide additional information. No further enforcement action was taken.

**Kearney County Sheriff's Office**

Complaint: An individual filed a complaint with this office alleging that the sheriff's office violated the KORA when it denied her access to records following her verbal request for access.

Resolution: Upon review, this office determined that the sheriff's office responded to the complainant's verbal request for records, even though the KORA was not mentioned. The request for records concerned the investigation into the death of the complainant's child. Upon review, it was determined that the records being sought were criminal investigation records within the meaning of the KORA, and with one exception, were not required to be released. The one exception involved the Kansas Standard Offense Report, certain portions of which are open. The failure to provide the portion of the records that were clearly open and to consider redaction violated the KORA. Additionally, neither the sheriff's office nor the county had adopted the brochure required by K.S.A. 45-227, which might have aided the sheriff's office in responding to this request. Based on the totality of the circumstances, this office determined that while formal enforcement action was not required, remedial action was necessary to ensure future KORA compliance. This included providing the complainant with records that were clearly open, considering whether redaction was possible, and preparing the required brochure. Because the sheriff's office promptly complied with the request for remedial action, no further enforcement action was necessary.

**Osage County Sheriff Laurie Dunn**

Complaint: An individual filed a complaint with this office alleging that the sheriff's office violated the KORA when it denied him access to audio and video records from police body and video camera records stemming from an encounter with sheriff's deputies and investigators on the individual's property.

Resolution: Upon review, this office determined that although the sheriff initially denied access to the records, it reconsidered the denial based on the passage of K.S.A. 45-254 concerning audio and video records made by law enforcement officials. Although the sheriff's office was not required to provide copies of the records, it provided the complainant with portions that related to him. After the conclusion of an investigation, the sheriff's office also advised the complainant that he could make arrangements to review the records in person in the sheriff's office as provided by the new law. The complainant never did so. Based on a review of the facts, this office concluded that the records in question were criminal investigation records and the complainant was a "subject" within the meaning of the statute and thus was one of the persons who was permitted to review the recordings. Because the actions taken by the sheriff's office were consistent with the KORA, no further enforcement action was necessary.

**Saline County District Court Clerk's Office**

Complaint: An individual filed a complaint with this office alleging that the clerk's office violated the KORA when it failed to respond to a request for records.

## **Kansas Open Records Act Complaints, continued**

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Resolution: Following receipt of the complaint, this office contacted the district court administrator for additional information. The court administrator advised that the clerk's office only learned of the complainant's KORA request when this office contacted the court for information. Once it became aware of the request, the clerk's office identified the requested records and determined the cost to provide them would be \$6. The clerk's office advised the complainant that upon payment of the requested fee, he would be provided with the records. Because the actions taken by the clerk's office were consistent with the KORA and the remedy requested by the complainant, no further enforcement action was necessary.

### **Sedgwick County Public Defender Office**

Complaint: An individual filed a complaint with this office alleging that the public defender's office violated the KORA when it failed to respond to a request for records (trial exhibits) associated with a criminal case and appeal.

Resolution: Following receipt of the complaint, this office contacted the chief public defender, who found that the files did not contain clearly marked trial exhibits. However, there were some records that might have been trial exhibits. The chief public defender agreed to work with the complainant to provide him with records. Because this was the remedy the complainant requested, this office determined this was the proper resolution of the matter, and declined to take further enforcement action.

### **Sedgwick County Sheriff's Office Records Division**

Complaint: An individual filed a complaint with this office alleging that the sheriff's office violated the KORA when it failed to provide a response after its initial acknowledgment of the request.

Resolution: Upon review, this office determined the sheriff's office provided an initial response within three business days as required. However, it admitted that due to an oversight, it failed to provide a final response after searching for the requested records. This office requested the sheriff's office take remedial action to ensure this problem did not arise in the future, as well as provide the response it should have provided following its search for records, including an explanation of the failure to respond; this office also asked the sheriff's office to provide an explanation to complainant if it denied her access to the records. Because the sheriff's office promptly complied with the request for remedial action, no further enforcement action was necessary.

### **Unified Government of Wyandotte County and Kansas City, Kansas**

Complaint: An individual filed two complaints with this office alleging that the UG failed to respond to his request within three business days.

Resolution: Upon review, this office determined that the UG had a new online system called NextRequest, which allowed online KORA requests and responses. While the public may request city and county records via the NextRequest system, it cannot be used to request district court records since the district court clerk is the records custodian. Despite this, the complainant submitted his request for the Petition and the Record of Activity in a specific court case through NextRequest. The UG's chief counsel

received and responded through NextRequest, advising complainant needed to contact the district court. This message was sent through the NextRequest system; because the system was still new, the chief counsel mistakenly assumed the UG clerk's office would forward this information to the complainant. This did not occur. When he did not receive a response, complainant contacted the UG's Public Information Officer (PIO) to express his concern that he had not received a response; this position is separate from the Freedom of Information Officer (FIO) required by K.S.A. 45-226. The PIO contacted the chief counsel and assistant county administrator about this concern; the complainant spoke to the assistant county administrator and stated that the UG had violated the KORA by failing to respond. The assistant county administrator immediately contacted the chief counsel, who discovered that his earlier response had been misdirected internally. The chief counsel called complainant to explain this and tell him his request should be directed to the clerk of the district court. The chief counsel also contacted the UG FIO and the district court clerk to discuss what happened to the complainant's KORA request; the FIO then located and forwarded the complainant's request to the district court clerk via email. These actions were taken even though the KORA does not require a public agency to forward requests filed with the wrong public agency to the proper public agency. Because the complainant did not provide a case number or the plaintiff's first name, or any other identifying information in his original request, the clerk's office emailed the complainant to ask for additional information to allow it to search for the requested records, as its system is a "party based system." This was reasonable as the case caption complainant provided included only the last name, and it was a very common surname. Once complainant provided this information, the clerk's office was able to locate and email the requested records. Following the complainant's experience, the UG placed a notice on the NextRequest portal to make clear it could not be used to request district court records. This notice also provided a telephone number for requesters to use to contact the district court to learn how to submit a request for records. Additionally, the UG implemented a process so that the FIO handles all requests seeking district court records. Based on the foregoing, this office determined that the UG did not violate the KORA. A records custodian must provide a response within three business days. However, in this instance, the complainant misdirected his request for records. In such circumstances, if the person to whom the request is directed is not the records custodian, that individual must notify the requester and furnish the name and location of the custodian of the public record, if known to or readily ascertainable. The UG did so. The UG attempted to respond as soon as it received complainant's request, although this response was mistakenly misdirected, and took remedial action to ensure other requesters did not have the same experience. The clerk's response clearly complied with the procedural requirements of the KORA. A requester has the responsibility to provide sufficient information to permit a public agency to search for records. Because the complainant did not provide sufficient or clear information that would have allowed the clerk to conduct a proper search for the requested records, she asked the complainant to clarify his request by providing a full first name. This was not unreasonable, especially when considering that the case name included a common surname, and the complainant did not provide a case number or other reference in his original request that would have allowed the clerk to easily

## Kansas Open Records Act Complaints, continued

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distinguish records that would be responsive to his request. Once the complainant did so, the clerk was able to locate and provide responsive records. Based on the foregoing, no further enforcement action was necessary.

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## COMPLAINTS AGAINST OTHER AGENCIES

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### **Aramark**

Complaint: An individual contacted this office alleging that Aramark, the food contractor for the Kansas Department of Corrections, violated the KORA when it failed to respond to his request for the names, titles and contact information for Aramark employees.

Resolution: This office requested the individual complete a complaint form as required by K.S.A. 45-252(a). The individual was also advised that the KORA applied to “public agencies” as defined by the act; this definition does not include any entity solely because it received public funds in exchange for goods or services. Additionally, the individual was advised that if a public agency is subject to the act, the KORA does not require it to answer questions seeking information or to create records that do not exist to respond to the request. The individual did not respond to the request to complete the required complaint form. No further action was taken on the complaint.

### **Cowley College**

Complaint: A member of the media filed a complaint with this office alleging the college violated the KORA when it failed to provide a response after its initial acknowledgment of the records request.

Resolution: Upon review, this office determined that although the complainant did not mention the KORA in her records request, the college interpreted it as a request for records under the KORA. The college did provide an initial response within three business days as required, but admitted that due to an oversight, it failed to provide a final response after searching for the requested records. This office requested that the college office take remedial action to ensure this problem did not arise in the future, as well as provide the response it should have provided following its search for records, including an explanation of the failure to respond. The college promptly complied with the request for remedial action. Because the college promptly complied with the request for remedial action, no further enforcement action was necessary.

### **Cowley College**

Complaint: A member of the media filed a complaint with this office alleging the college violated the KORA when it denied his request for the results of an employee survey conducted by the college.

Resolution: Upon review, this office determined that the survey consisted of some comparison tables, individual anonymous employee comments, and raw data batch responses. The college asserted several exemptions to disclosure to support its denial. After review of the survey and the asserted exemptions, this office determined that the college did not



meet its burden to show the survey in its entirety was not subject to disclosure under exemptions for personnel records, research data in the process of analysis, data compiled for research or census purposes concerning identifiable individuals, records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy, or copyright. Instead, only portions of the records might be protected under some of these exemptions to disclosure. The records were also not protected under policies adopted by The Higher Learning Commission. Because the college conceded that it had not considered whether the records could be redacted, this office requested the college review and redact the records, and provide any redacted records to the complainant. Because the college promptly complied with the request for remedial action, no further enforcement action was necessary.

### **Ellsworth County District Court and District Court Clerk Peggy Svaty**

Complaint: An individual filed a complaint with this office alleging that the district court and the district court clerk violated the KORA when they failed to allow her access to inspect 2017 civil judgments.

Resolution: Upon investigation, this office determined that the district court clerk is not a public agency within the meaning of the KORA. Because the complainant also named the district court in her complaint, this office completed its review of this matter and determined that the complainant was seeking to review civil judgments, small claims and tax warrants for a seven-year period. Under the applicable Kansas Supreme Court rule governing access to records, such records are only available on a case-by-case basis. Because the district court was complying with the applicable rules governing court records, there was no violation of the KORA, and no further enforcement action was taken.

### **Four County Mental Health Center, Inc.**

Complaint: An individual filed a complaint with this office alleging that the mental health center violated the KORA when its response to his request for records was not on letterhead.

Resolution: Upon review, this office determined that the complainant received both a verbal (via telephone) and written response to his request for records. The written response was handwritten on a Memo form with the mental health center's name and address printed on the top of the form, and it stated that the center did not have any records. Although it was unclear based on the available information that the mental health center was a public agency within the meaning of the KORA, its actions were consistent with the KORA. Although the complainant wanted a response on letterhead, the KORA does not require a public agency to respond in writing using letterhead or specific language to indicate that the agency does not have the requested records. A public agency cannot provide records it does not have. Based on the facts, this office concluded no further action was required.



## **Kansas Open Records Act Complaints, continued**

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### **Independence Community College**

Complaint: An individual filed a complaint with this office alleging that the college violated the KORA when it failed to respond to a records request within 72 hours, did not provide all the requested records, and charged an unreasonable fee.

Resolution: This office requested the complainant clarify the nature of the complaint and submit the supporting documentation mentioned in the complaint. The complainant did not respond to the request, therefore, no further action was taken.

### **Lakewood Hills Home Improvement District**

Complaint: An individual filed a complaint with this office alleging the district violated the KORA by denying her request for a copy of the meeting minutes of the special meeting where the district board discussed her termination.

Resolution: Upon investigation, this office determined that the district's response to the complainant's records request was consistent with the KORA. The district advised the complainant that the minutes would be approved at the next board meeting. Until then, they were only a draft and not required to be disclosed unless identified in the agenda for an open meeting or publicly cited or identified in an open meeting. Neither one of these events had occurred. Although not required by the KORA, the district offered to provide complainant with a copy of the minutes as soon as they were approved by the board at its next meeting. The complainant did not respond to this offer. Under the KORA, a public agency must only produce records in existence at the time of the request; it does not require a public agency to provide records based on a standing request or prospective request for documents not yet in existence. Because the district complied with the KORA, no formal enforcement action was warranted.

### **USD 225, Fowler School District**

Complaint: An individual filed a complaint with this office alleging that the district violated the KORA when it failed to provide him with copies of the superintendent's and principal's contracts as requested.

Resolution: Upon review, this office determined that the complainant made a KORA request, which was received by the district. However, when making his records request, the complainant failed to provide his contact information. The district had the records copied and available to be mailed or picked up. This office advised the complainant to make arrangement to either pick up the records or provide contact information so the records could be mailed. During the investigation, this office learned that the district had not adopted the brochure required by K.S.A. 45-227. At the conclusion of the investigation, this office requested the district take remedial action to comply with these statutory requirements. The district promptly complied with this request. No further enforcement action was taken.

**USD 259 Wichita School District, Marshall Middle School and Principal Ronald Stubbs**

Complaint: An individual filed a complaint with this office alleging that the district and middle school violated the KORA when they failed to respond to his request for a transcript concerning his daughter.

Resolution: Upon review, this office learned that the school district and middle school did not receive the complainant's request for records. At the request of this office, the school searched for the requested transcript, and located a record. However, this record was not required to be disclosed under the KORA due to the requirements of the Family Education Rights and Privacy Act (FERPA). A parent of a student has the right to access some student records until the student turns 18 or is attending an institution of postsecondary education. Thereafter, the right to access student information transfers to the student. Here, the student was over the age of 18. Therefore, even if the school had received the KORA request, it would not have been permitted to release the transcript. Based on these facts, this office concluded the KORA was not violated, and no further enforcement action was taken.

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**REFERRALS TO COUNTY OR DISTRICT ATTORNEY OFFICES**

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- **City of Overland Park, City Council Members Dan Stock and Terry Goodman, and Member-elect Gina Burke** (Johnson County) – actions taken during recent election.
- **USD 231, Gardner/Edgerton Board of Education** – access to records discussed during school board meeting. *See* county report for details.

<p><b>NOTE:</b> In addition to the foregoing, the Office of the Attorney General received 39 complaints using the KOMA/KORA complaint form that did not state a violation of the KOMA or the KORA.</p>
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## Counties Reporting KOMA/KORA Complaints

County	County or District Attorney	Report
Allen	Jerry B. Hathaway	No KOMA/KORA complaints to report
Anderson	Brandon L. Jones	No KOMA/KORA complaints to report
Atchison	Sherri Becker	No KOMA/KORA complaints to report
Barber	Gaten T. Wood	Following a KORA complaint against the Barber County Sheriff's Department, a Petition for Writ of Mandamus was filed in Barber County District Court requesting the court to compel the sheriff to release all body camera video and audio recordings of an October 2, 2017, incident. The video and audio files were released.
Barton	Amy Mellor	No KOMA/KORA complaints to report
Bourbon	Jacque Spradling	No report filed
Brown	Kevin M. Hill	No KOMA/KORA complaints to report
Butler	Darrin C. Devinney	<p>The Butler County Planning Commission self-reported a possible violation of the KOMA when five of the 10 members of the planning commission met on site at a potential quarry location outside of normal meeting times. The county attorney attended the next regular meeting of the planning commission and presented an hour long training regarding KORA and KOMA to its members. The county commissioners also attended this training. Because the planning commission self-reported the possible violation, no separate citizen complaint was filed, and the planning commission was willing to accept responsibility for its actions, the training appeared to be sufficient to ensure no further violations of this nature.</p> <p>A citizen reported a concern about the Butler County Sheriff's Office denying a third party's KORA request for a "Brady-Giglio" list or policy. Upon review, the county attorney notified the individual that if the public agency does not have a record, it cannot be provided and thus the KORA is not violated. The county attorney also advised the individual that neither the judicial district nor the county attorney had written policies.</p>
Chase	William F. Halvorsen	No KOMA/KORA complaints to report
Chautauqua	Ruth A. Ritthaler	No KOMA/KORA complaints to report
Cherokee	Jacob A. Conard	No KOMA/KORA complaints to report
Cheyenne	Leslie Beims	No KOMA/KORA complaints to report

**Counties Reporting KOMA/KORA Complaints, continued**

<b>County</b>	<b>County or District Attorney</b>	<b>Report</b>
Clark	Allison D. Kuhns	<p>A KOMA complaint filed against the Ashland District Hospital alleged board members were intentionally speaking too quietly to be heard by the public and that a couple board members were conducting side conversations that were not audible by anyone else. The county attorney could not find a violation, the allegation being made by a single individual regarding a highly factual, intent-driven situation. However, a warning letter was sent to hospital regarding intentionally impairing the public’s ability to hear; the hospital responded by purchasing headphone amplifiers for the individuals in attendance, which goes above and beyond what is required by KOMA.</p> <p>No KORA complaints to report.</p>
Clay	Richard E. James	No report filed
Cloud	Robert A. Walsh	No report filed
Coffey	Wade H. Bowie II	<p>A KOMA complaint filed against the Waverly City Council alleged that between April and September 2017 the mayor and city council pre-selected individuals to participate in a television show with producers and that the mayor and city council also negotiated with production members outside of regular council meetings. After investigation, the violations related to KOMA were unsubstantiated. All communications described in the complaint were accomplished without a majority of the council involved, and, as such, did not implicate the KOMA.</p> <p>No KORA complaints to report</p>
Comanche	Allison D. Kuhns	No KOMA/KORA complaints to report
Cowley	Larry R. Schwartz	<p>A KOMA complaint filed against the Cowley College Board of Trustees alleged the board did not give the public an opportunity to be heard on a personnel matter discussed in executive session. After investigation, no violation was found. The KOMA allows the board to discuss nonelected personnel matters in executive session.</p> <p>No KORA complaints to report.</p>
Crawford	Michael Gayoso Jr.	No KOMA/KORA complaints to report
Decatur	Steven W. Hirsch	No KOMA/KORA complaints to report
Dickinson	Andrea Purvis	No report filed
Doniphan	Charles D. Baskins	No report filed

## Counties Reporting KOMA/KORA Complaints, continued

County	County or District Attorney	Report
Douglas	Charles E. Branson	No KOMA/KORA complaints to report
Edwards	Mark Frame	No report filed
Elk	Joe E. Lee	No KOMA/KORA complaints to report
Ellis	Thomas J. Drees	No KOMA/KORA complaints to report
Ellsworth	Paul J. Kasper	No KOMA/KORA complaints to report
Finney	Susan H. Richmeier	No KOMA/KORA complaints to report
Ford	Kevin B. Salzman	No KOMA/KORA complaints to report
Franklin	Brandon L. Jones	No KOMA/KORA complaints to report
Geary	Krista Blaisdell	No KOMA/KORA complaints to report
Gove	Mark F. Schmeidler	No KOMA/KORA complaints to report
Graham	Jill Elliott	No KOMA/KORA complaints to report
Grant	Jessica Akers	No KOMA/KORA complaints to report
Gray	Curtis E. Campbell	No KOMA/KORA complaints to report
Greeley	Charles F. Moser	No KOMA/KORA complaints to report
Greenwood	Joe E. Lee	No KOMA/KORA complaints to report
Hamilton	Robert H. Gale, Jr.	No KOMA/KORA complaints to report
Harper	Richard Raleigh	No KOMA/KORA complaints to report
Harvey	David E. Yoder	No KOMA/KORA complaints to report
Haskell	Lynn Koehn	No KOMA/KORA complaints to report
Hodgeman	Mark A. Cowell	No KOMA/KORA complaints to report
Jackson	Shawna R. Miller	No KOMA/KORA complaints to report
Jefferson	Josh Ney	No KOMA/KORA complaints to report
Jewell	Darrell E. Miller	No KOMA/KORA complaints to report

**Counties Reporting KOMA/KORA Complaints, continued**

<b>County</b>	<b>County or District Attorney</b>	<b>Report</b>
Johnson	Stephen M. Howe	<p>A complaint from the Gardner News alleged that three Gardner City council members violated the KOMA by meeting with two council candidates without proper notification of a possible quorum. After a thorough investigation, the office determined that there were no actionable violations of the KOMA.</p> <p>The Mission Hills City Administrator self-reported a potential violation of KOMA by failing to provide notice of a meeting to discuss a city project. After investigation, the office determined that there was not KOMA violation.</p>
Kearny	Kenny Estes	No KOMA/KORA complaints to report
Kingman	Matthew W. Ricke	No KOMA/KORA complaints to report
Kiowa	Chay Howard	No KOMA/KORA complaints to report
Labette	Stephen P. Jones	No KOMA/KORA complaints to report
Lane	Dale E. Pike	No KOMA/KORA complaints to report
Leavenworth	Todd Thompson	No report filed
Lincoln	Jennifer R. O'Hare	No KOMA/KORA complaints to report
Linn	James M. Brun	No KOMA/KORA complaints to report
Logan	Craig L. Uhrich	No report filed
Lyon	Marc Goodman	<p>A KOMA complaint was filed against the Board of Directors of Rural Water District #3 alleging that an executive session was held to discuss personnel matters pertaining to nonelected personnel, but instead was used to discuss a water meter for an individual. No discussion related to personnel occurred. A letter was sent to the board suggesting that they attend an upcoming regional training on Kansas Open Meetings Act presented by the Kansas Attorney General's Office.</p> <p>No KORA complaints to report</p>

**Counties Reporting KOMA/KORA Complaints, continued**

County	County or District Attorney	Report
Marion	Courtney D. Boehm	<p>The superintendent of USD 410 verbally self-reported a possible violation of the KOMA involving a conference call among school board members regarding an impending arrest that might take place during school hours. The board reported that it did not make any motions, take any votes or handle any business. After reporting the information to the school board members, a board member mentioned that DCF should be contacted, and the conversation was terminated. Based on the extenuating circumstances, no formal enforcement action was taken. The county attorney did advise the board in writing that in the future each board member should be contacted individually. The county attorney noted that serial communications are still an issue that should be monitored though. Interactive communication outside of a noticed meeting may also be a meeting under KOMA. Finally, the county attorney also requested that all future possible KOMA violations be submitted in writing.</p> <p>A citizen filed a complaint KOMA complaint against the Durham City Council alleging that the council members discussed amongst themselves whether to change the date of the July 2017 city council meeting because it fell on a holiday. The complainant also was concerned that there was no ordinance setting a day for the regularly scheduled meeting. The county attorney contacted the Durham city attorney regarding the complaint. The city attorney forwarded the meeting minutes from the July 2017 meeting; the city attorney also indicated that the city clerk was not able to locate the original ordinance that set the meetings. Because of this, the city council planned to pass a new one at their November 2017 meeting. After investigation, no formal enforcement action was taken. The county attorney advised the city attorney of the possible KOMA violation related to discussing the meeting date and that the city council needed to take action to avoid future violations. The council also passed Ordinance No. 2017-01 to set a regular schedule of its meetings. This action appeared to comply with the statutory requirements for scheduling meetings.</p> <p>No KORA complaints to report.</p>
Marshall	Laura Johnson-McNish	<p>A KOMA complaint was filed against the Board of County Commissioners alleging an improper executive session. At the request of the county attorney, the Attorney General’s Office investigated due to a conflict.</p> <p>No KORA complaints to report.</p>



**Counties Reporting KOMA/KORA Complaints, continued**

<b>County</b>	<b>County or District Attorney</b>	<b>Report</b>
McPherson	Greg T. Benefiel	No KOMA/KORA complaints to report
Meade	Clay A. Kuhns	No KOMA/KORA complaints to report
Miami	Elizabeth H. Sweeney-Reeder	No KOMA/KORA complaints to report
Mitchell	Mark J. Noah	No KOMA/KORA complaints to report
Montgomery	Larry Markle	A complaint alleged that the Independence Community College Board of Trustees violated the KOMA by improperly holding an executive session to end the ICC baseball program at the end of the 2017/2018 season. After investigation, it was determined that the KOMA was not violated.  No KORA complaints to report.
Morris	Laura E. Allen	No KOMA/KORA complaints to report
Morton	Eric L. Witcher	No KOMA/KORA complaints to report
Nemaha	Brad M. Lippert	No KOMA/KORA complaints to report
Neosho	Linus A. Thuston	No KOMA/KORA complaints to report
Ness	Kevin B. Salzman	No KOMA/KORA complaints to report
Norton	Melissa Schoen	No KOMA/KORA complaints to report
Osage	Jack K. Hobbs	No KOMA/KORA complaints to report
Osborne	Paul S. Gregory	No KOMA/KORA complaints to report
Ottawa	Richard A. Buck	No KOMA/KORA complaints to report
Pawnee	Douglas W. McNett	No report filed
Phillips	Melissa M. Schoen	No KOMA/KORA complaints to report
Pottawatomie	Sherri Schuck	No KOMA/KORA complaints to report
Pratt	Tracey T. Beverlin	No KOMA/KORA complaints to report
Rawlins	Charles A. Peckham	No KOMA/KORA complaints to report
Reno	Keith E. Schroeder	No KOMA/KORA complaints to report

**Counties Reporting KOMA/KORA Complaints, continued**

<b>County</b>	<b>County or District Attorney</b>	<b>Report</b>
Republic	Justin Ferrell	<p>A KOMA complaint was filed against the county commission alleging the reason given for recessing into an executive session was improper. Following review, it was determined that there was no violation. The reason the commission went into executive session was proper, but perhaps not the best reason available to give. The county attorney discussed the issue with the commission and the matter was satisfactorily resolved.</p> <p>No KORA complaints to report</p>
Rice	Remington Dalke	No KOMA/KORA complaints to report
Riley	Barry R. Wilkerson	<p>A KOMA complaint was filed against the Manhattan Area Technical College raising a concern based on incomplete minutes that the matters discussed in executive session were improper. Upon review, it was determined that the matters were all appropriate for executive session discussion. Two matters involved personnel matters. One matter involved negotiations and the fourth matter involved financial information from local banks seeking MATC's accounts. These items were all properly discussed in executive session. The minutes were incomplete. A vote on the matter(s) was properly taken in open session, however the vote was not recorded in the minutes. Corrective action was taken with the assistance of the MATC attorney to ensure all votes will be recorded in the minutes.</p> <p>No KORA complaints to report.</p>
Rooks	Danielle N. Muir	No KOMA/KORA complaints to report
Rush	Tony W. Rues	No KOMA/KORA complaints to report
Russell	Daniel W. Krug	No KOMA/KORA complaints to report
Saline	Ellen H. Mitchell	No KOMA/KORA complaints to report
Scott	Rebecca J. Faurot	No KOMA/KORA complaints to report

**Counties Reporting KOMA/KORA Complaints, continued**

<b>County</b>	<b>County or District Attorney</b>	<b>Report</b>
Sedgwick	Marc A. Bennett	<p>No KOMA complaints to report.</p> <p>A KORA complaint alleged violation of violation of K.S.A. 45-230 for alleged unlawful use of names derived from public records. Complainant received a mailing offering to purchase his home and indicating his name had been obtained from public records. No violation was found. K.S.A. 45-230 prohibits, with certain exceptions, the receipt of a list of names derived from public records for the purpose of selling or offering to sell property or services. The list of names here was used to offer to purchase property, not to sell or offer to sell property or services.</p>
Seward	Russell W. Hasenbank	No KOMA/KORA complaints to report
Shawnee	Michael Kagay	<p>A KOMA complaint was filed against the Investigative Committee of the Kansas State Board of Nursing. The complaint centered on whether the committee improperly entered into executive session, improperly extended the executive session, discussed improper matters during the executive session, and allowed unauthorized parties to participate in the executive session. The investigation into this matter revealed that although the minutes reflected the session in question was an executive session, in reality the session was for performance of the committee’s quasi-judicial functions authorized by Kansas law. For these reasons, KOMA does not apply and, therefore, no violation was found.</p> <p>A KORA complaint was filed against the Silver Lake Township Board alleging that the board failed to provide a timely and meaningful response to a request for records. The investigation revealed a clear violation by the board. However, the violation appeared to be caused by recent turnover in membership on the board, as well as a simple lack of awareness. All board members cooperated with the investigation, they all underwent KORA training, and they took immediate action to bring the board into compliance with all KORA requirements. Once verification of these actions was obtained, the investigation was closed and no further action was taken. All parties were notified of the result.</p>
Sheridan	Harry Joe Pratt	No KOMA/KORA complaints to report
Sherman	Charles F. Moser	No KOMA/KORA complaints to report
Smith	Tabitha Owen	No KOMA/KORA complaints to report
Stafford	Michael C. Robinson	No KOMA/KORA complaints to report
Stanton	David C. Black	No KOMA/KORA complaints to report

## Counties Reporting KOMA/KORA Complaints, continued

County	County or District Attorney	Report
Stevens	Paul F. Kitzke	No KOMA/KORA complaints to report
Sumner	Kerwin L. Spencer	No KOMA/KORA complaints to report
Thomas	Rachel Lamm	No KOMA/KORA complaints to report
Trego	Christopher Lyon	A KOMA complaint was filed against the Trego County Manor Board alleging that three members of the board spoke privately in the hallway prior to meeting with the Trego County Commissioners on July 31, 2017. No action was taken as the board dissolved in October/November of 2017.  No KORA complaints to report.
Wabaunsee	Timothy Liesmann	No KOMA/KORA complaints to report
Wallace	Charles F. Moser	No KOMA/KORA complaints to report
Washington	Elizabeth Baskerville Hiltgen	No KOMA/KORA complaints to report
Wichita	Laura L. Lewis	No KOMA/KORA complaints to report
Wilson	Kenley Thompson	No report filed
Woodson	Zelda Schlotterbeck	No KOMA/KORA complaints to report
Wyandotte	Mark Dupree	No KOMA/KORA complaints to report

## Enforcement Actions

The following enforcement actions were taken by the attorney general's office and their requirements were satisfied during the 2018 fiscal year, pursuant to K.S.A. 45-251(e) and K.S.A. 75-4320d(e). Copies of the enforcement actions may be found at <http://ag.ks.gov/open-government/enforcement-actions>.

### **City of South Hutchinson Police Department**

*2017-OG-0003*

*Consent Order Entered into August 8, 2017*

*Requirements Satisfied October 16, 2017*

Kansas Open Records Act; Failure to Respond Within Three Business Days

### **Paul Snider, Chairman, Johnson County Park and Recreation District Board**

*2017-OG-0004*

*Consent Order Entered into October 5, 2017*

*Requirements Satisfied November 8, 2017*

Kansas Open Meetings Act; Serial Communications

### **Baldwin City Council**

*2017-OG-0005*

*Consent Order Entered into October 5, 2017*

*Requirements Satisfied October 18, 2017*

Kansas Open Meetings Act; Serial Communications; Executive Sessions

# Trainings Provided

<b>Date</b>	<b>Event</b>	<b>Location</b>	<b>Attendees</b>
9/8/2017	KOMA/KORA Public Training	Leavenworth, Leavenworth County	30
9/11/2017	KOMA/KORA Public Training	Manhattan, Riley County	50
9/12/2017	KOMA/KORA Public Training	Hays, Ellis County	10
9/13/2017	KOMA Training - Southwest Kansas Association of Counties	Dodge City, Ford County	250
9/14/2017	KOMA/KORA Public Training	El Dorado, Butler County	25
10/6/2017	KOMA/KORA Public Training	Topeka, Shawnee County	90
11/28/2017	KOMA Training - Emporia	Emporia, Lyon County	12
1/4/2018	KOMA/KORA Training - Kansas Legislative Research Department	Topeka, Shawnee County	30
1/29/2018	KOMA/KORA Training - Kansas State University – Morning Session	Manhattan, Riley County	40
1/29/2018	KOMA/KORA Training - Kansas State University – Afternoon Session	Manhattan, Riley County	40
4/18/2018	KORA Training - Kansas APCO (Association of Public-Safety Communications Officials)	Mulvane, Sedgwick and Sumner Counties	10
5/3/2018	KORA Training - KAPIO (Kansas Association of Public Information Officers) Annual Conference	Emporia, Lyon County	31
5/9/2018	KOMA/KORA Training - KCCEOA (Kansas County Clerks and Election Officials) Annual Conference	Wichita, Sedgwick County	75



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