

2019

Kansas Open Meetings Act Kansas Open Records Act Annual Report

Kansas Fiscal Year 2019
(July 1, 2018 – June 30, 2019)

Pursuant to K.S.A. 75-753



**KANSAS
ATTORNEY GENERAL**

DEREK SCHMIDT



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

June 2020

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 2019 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,

A handwritten signature in black ink that reads "Derek".

Derek Schmidt
Kansas Attorney General

Table of Contents

Kansas Open Meetings Act Complaints.....	4
Complaints against State Agencies Resulting In Corrective Action	4
Complaints against Cities Resulting in Corrective Action	4
Complaints against Counties Resulting in Corrective Action	5
Complaints against Other Agencies Resulting in Corrective Action	7
Referrals to County or District Attorney Offices	8
Complaints Resulting in a Finding of No Violation.....	9
Kansas Open Records Act Complaints	18
Complaints against State Agencies Resulting in Corrective Action	18
Complaints against Cities Resulting in Corrective Action	20
Complaints Against Counties Resulting in Corrective Action.....	21
Complaints against Other Agencies Resulting in Corrective Action	22
Referrals to County or District Attorney Offices	22
Complaints Resulting in a Finding of No Violation.....	23
Counties Reporting KOMA/KORA Complaints.....	36
Formal Enforcement Actions	44
Trainings Provided	45

Kansas Open Meetings Act Complaints

COMPLAINTS AGAINST STATE AGENCIES RESULTING IN CORRECTIVE ACTION

There were no corrective actions taken against state agencies during FY 2019.

COMPLAINTS AGAINST CITIES RESULTING IN CORRECTIVE ACTION

Baxter Springs City Council

Complaint: An individual filed a complaint with this office alleging that the city council violated the KOMA by failing to comply with the statutory requirements for recessing into executive session.

Resolution: Upon review, this office found that the city council's motions for executive sessions and the minutes recording them fell short of complying with the statutory requirements of the KOMA on 11 occasions. Although the city's motions fell short of complying with the KOMA, this office concluded that the failure to meet the statutory requirements was a technical violation of the KOMA. This office requested the city take remedial action to correct the pattern of deficient motions and incomplete recording of the motions in the meeting minutes. This included establishment of a checklist to ensure the council would satisfy the statutory elements when recessing into an executive session and at least one hour of KOMA training. The city council complied with the request for remedial action, and no formal enforcement action was taken.

Kanopolis City Council and Mayor Anthony Hopkins

Complaint: The former city clerk filed a complaint with this office alleging that the city council and mayor violated the KOMA by reaching a consensus during an executive session to terminate her appointment as city clerk, then immediately implemented its decision without holding a public vote.

Resolution: Upon investigation, the council stipulated that they violated the KOMA by taking the binding action of terminating the city clerk's appointment during an executive session and then failing to hold a public vote before implementing the employment action. This office sought voluntary compliance with the KOMA through a Consent Order that required the mayor and each council member to receive at least one hour of training on the provisions of the KOMA and to agree not to engage in any future violations of the KOMA. One council member was not required to sign the Consent Order because he was absent from the meeting when the violation occurred. The council promptly complied with the requirements of the Consent Order.

**COMPLAINTS AGAINST COUNTIES
RESULTING IN CORRECTIVE ACTION**

Ford County Clerk's Office, Board of Canvassers

Complaint: An individual filed a complaint with this office alleging that the county clerk's office violated the KOMA when she was required to watch the Board of Canvassers meeting through a window.

Resolution: This office immediately contacted the county counselor, who advised that the board meeting was open to the public and the complainant was permitted to attend. Once the board determined which ballots should be accepted, it appears the complainant was advised that she could observe the actual tabulation of the ballots through a window. After she raised a concern that she was not permitted to be present in the room while the ballots were tabulated, the county counselor advised this office that she was permitted to be physically present in the room where the ballots were being tabulated. Based on this, no formal enforcement action was taken.

Leavenworth County Board of Commissioners – Commissioners Holland and Bixby

Complaint: An individual, who was also a member of the commission, filed a complaint with this office in his individual capacity alleging a violation of the KOMA based on the method of adoption of certain employment contracts entered into by the commission.

Resolution: Upon review, it appeared that the issues raised in the complaint were closely related to the issues being actively litigated in a declaratory judgment action in Leavenworth County District Court. This office thus held the complaint open without further action pending resolution of that litigation. After some time, the complaint was closed because the issues raised had been resolved by the district court case, the composition of the commission had substantially changed, and the commission appeared to have adjusted its practices. Nonetheless, this office brought the complainant's concerns to the attention of the county administrator and strongly encouraged the commission be trained on the provisions of the KOMA.

Leavenworth County Commission and Commissioner Holland

Complaint: The county treasurer filed a complaint with this office alleging that the county commission violated the KOMA by discussing matters in executive session and reaching a consensus without taking binding action in an open meeting, improperly recessing into an executive session for consultation with an attorney though no attorney was present, directing action without taking binding action in an open meeting, and holding an emergency board meeting without proper notification. The complainant sought the ouster of Commissioner Holland.

Resolution: This office determined that the commission did not violate the KOMA by presenting and discussing during executive session a settlement agreement that was never finalized because it appeared that any proposals and counterproposals were not intended to be binding until a written separation agreement was fixed and fully

Kansas Open Meetings Act Complaints, continued

executed by the parties, which never happened. As to recessing into executive session “to preserve attorney client privilege” without an attorney present, an audio recording of the meeting revealed that the commission never actually recessed into executive session, as it quickly realized that it was improper. The motion was a technical violation of the KOMA. Next, no KOMA violation was found based on one commissioner directing the building and grounds deputy director to alter an employee’s security access because this was not action taken by or requiring binding action by the commission; the deputy director had independent authority to create or change security access to the building. Finally, the notification for an emergency board meeting sent a little over an hour in advance of the meeting was not unreasonable under the circumstances, but the notice technically violated the KOMA by failing to include the place the special meeting was to be held. This office requested the commission take remedial action to ensure that each notice for a meeting satisfies all the requirements of the KOMA, and this request was satisfied. Regarding the complainant’s requested remedy, this office declined to commence ouster proceedings as ouster is not an available remedy under the KOMA and it was not found to be warranted. The complaint also raised an issue about the termination of an employee. This part of the complaint was held open while the issue was actively litigated in the district court and later closed because the issues raised had been resolved by the district court case and the composition of the commission had substantially changed. Nonetheless, this office brought the matter to the attention of the county administrator and strongly encouraged that the commission be trained on the provisions of the KOMA.

Lincoln County Board of County Commissioners

Complaint: An individual filed a complaint with this office alleging that the board violated the KOMA by failing to comply with the statutory requirements for recessing into executive session.

Resolution: Upon review of an audio recording, as well as minutes from other board meetings, this office found the board’s motion for executive session likely fell short of the statutory requirements. To the extent that the motion violated the KOMA, it was a technical violation in that the public body made a good faith effort to comply and was in substantial compliance with the KOMA, no one was prejudiced, and the public’s right to know was not effectively denied. This office requested that the county take remedial action to ensure the commission complied with the statutory requirements for recessing into executive session in the future. No formal enforcement action was taken.

Marshall County Board of County Commissioners

Complaint: The county attorney advised that an individual reported to her office that the commission allegedly violated the KOMA when it discussed improper subject matters in an executive session and asked this office to review the matter.

Resolution: Upon investigation, the commissioners admitted they violated the KOMA when they recessed into executive session using an improper justification and failed to include a sufficiently specific statement describing the subjects to be discussed during the

Kansas Open Meetings Act Complaints, continued

executive session or state the place the open meeting would resume. This office sought voluntary compliance with the KOMA through a Consent Order that required the commissioners obtain at least one hour of training on the provisions of the KOMA and agree not to engage in future violations of the KOMA. The commission promptly complied with the requirements of the Consent Order.

Unified Government of Wyandotte County/Kansas City, Kansas Economic Development and Finance Committee

Complaint: A member of the media filed a complaint with this office alleging that the UG's Economic Development and Finance Committee violated the KOMA by holding a meeting at a different time than was posted on the UG's website.

Resolution: This office contacted the UG about the complaint. It advised that due to a clerical mistake and the software program used to create agendas, the website showed a correct start time for the meeting in one place and an incorrect time in another. This impacted the ability of the public to attend the meeting and violated the KOMA. Because the UG had made a good faith effort to comply with the KOMA, readily admitted its mistake, and agreed that it would not begin any open meeting before its posted time, no formal enforcement action was taken.

COMPLAINTS AGAINST OTHER AGENCIES RESULTING IN CORRECTIVE ACTION

USD 376 Board of Education (Sterling)

Complaint: An individual filed a complaint with this office alleging that the board violated the KOMA by holding a private retreat closed to the press and public in a distant location. The complaint also raised concerns about the board's use of executive sessions and possible binding action during executive session.

Resolution: Upon investigation, it was determined that the board's "retreat" was open and accessible to the public. It was discussed in open meetings, notice and copies of the agenda were sent to all who requested it, and there was no suggestion that any individual was unable to attend due to its location. Because there was no violation of the KOMA, no enforcement action was required on this part of the complaint. As to the second part of the complaint, the board admitted that on three occasions it entered into executive session using a justification that did not describe the subjects discussed in the executive session in violation of the KOMA. The board also stipulated that it failed to comply with the statutory requirements for recessing into executive session by failing to include in its motion the place where the open meeting would resume. This office sought voluntary compliance with the KOMA through a Consent Order that required the president and each board member to pay a civil penalty, receive at least one hour of training on the provisions of the KOMA, and not to engage in any future violations of the KOMA. The board promptly complied with the requirements of the Consent Order.

REFERRALS TO COUNTY OR DISTRICT ATTORNEY OFFICES

- **Valley Center Recreation Commission Board** (Sedgwick County) – attended a mediation but did not call a special meeting.
- **Lincoln Township Board** (Butler County) – failure to comply with statutory requirements for recessing into executive session; taking employment action without a public vote.
- **Sedgwick County Commission and Commissioner David Dennis, Dave Unruh, and Michael O'Donnell** – serial communications.
- **Winchester City Council** (Jefferson County) – serial communications; binding action in executive session; failure to provide public notice of meetings.
- **Lincoln Township Board** (Butler County) – failure to comply with statutory requirements for recessing into executive session; taking employment action without a public vote.

COMPLAINTS RESULTING IN A FINDING OF NO VIOLATION

Public Body or Agency	Alleged Violation(s)	Resolution
<p>Meade County Hospital Board Members Tom Rickard, Milton Tacha, and Ruth Miller</p>	<p>KOMA – meeting notice; serial communications; refusal to state agenda for special meeting; executive session justification; no public notice given to newspaper; board chair acting beyond scope of board authority; breach of fiduciary duty and duty of good faith; conflict of interest</p>	<p>The hospital board did not violate the KOMA on matters related to notice, reason for special meeting, and rules of conduct.</p> <p>The KOMA does not require a public body to give notice to the general public by publishing newspaper notices, airing radio notices, or by posting notices on the internet. The notice requirement is satisfied if notice of the meeting is provided to the individual requesting notice.</p> <p>The failure to specify the nature of or reason for a special meeting, without more, is not a violation of the KOMA.</p> <p>The KOMA does not establish rules of conduct for members of a public body.</p> <p>Matters related to acting outside the scope of authority, breach of fiduciary duty and duty of good faith and conflict of interest are outside the scope of the KOMA.</p> <p>The complainant did not respond to a request for clarification, additional information and supporting documentation about the remaining concerns.</p>
<p>Lakewood Hills Improvement District</p>	<p>KOMA – executive session justification</p>	<p>The complainant did not respond to a request for clarification and additional information/supporting documentation.</p>
<p>St. John City Council</p>	<p>KOMA – executive sessions; failure to comply with city code and K.S.A 15-106 regarding special meetings</p>	<p>The complainant did not respond to a request for clarification and additional information/supporting documentation.</p>

Kansas Open Meetings Act Complaints, continued

Public Body or Agency	Alleged Violation(s)	Resolution
Robin Richardson, Unified Government of Wyandotte County/Kansas City Kansas	KOMA – denied a permit	The complainant did not respond to a request for clarification and additional information/supporting documentation.
City of LaCygne Municipal Court	KOMA – not permitted to make audio or video recording of public court proceedings	<p>The municipal court did not violate the KOMA.</p> <p>The KOMA does not apply to judges or judicial bodies, such as a municipal court. Thus, open public hearings are not considered meetings within the meaning of the KOMA.</p>
Zelda Schlotterbeck, Woodson County Attorney and Woodson County Commission Vice Chair and member Trent Forsyth	KOMA – county attorney improperly asked for executive session; dissatisfied with comments made during executive session about her; should have been asked to participate in executive session if going to discuss the complainant	<p>Complainant passed away before providing additional information about the complaint. Based on limited information provided, the commission properly held an executive session that did include the complainant.</p> <p>A public body may invite individuals to attend executive session only if each such person is present to provide information to the body on a permissible topic or participate in its discussion, and the individual’s presence will aid the body in its discussions. The only exception is that non-clients cannot attend executive sessions held for attorney-client privileged communication. Although others may request an executive session, it is up to the public body to decide to hold an executive session and comply with the statutory requirements for recessing into the executive session.</p>
Minneapolis City Council	KOMA – meeting at bar and city administrator’s house; overheard discussing city business at bar	The complainant did not respond to a request for clarification and additional information/supporting documentation.

Kansas Open Meetings Act Complaints, continued

Public Body or Agency	Alleged Violation(s)	Resolution
Valley Center Recreation Commission	KOMA – entire commission participated in mediation without providing public notice of meeting	The complainant did not respond to a request for clarification and additional information/supporting documentation.
Salina City Commission	KOMA – binding action in executive session	<p>The commission did not violate the KOMA.</p> <p>A public body may reach a “consensus” or general agreement on a matter requiring binding action during an executive session. However, it cannot take binding action in executive session. There is no exception to this requirement. Under the KOMA, taking binding action means voting publicly to approve or deny a particular request. A consensus may constitute binding action and violate the KOMA if a public body fails to take a formal public vote after reaching a consensus during an executive session. The commission held a public vote and did not act to implement its consensus before its public vote.</p>

Kansas Open Meetings Act Complaints, continued

Public Body or Agency	Alleged Violation(s)	Resolution
Florence City Council	KOMA – not permitted to make public comments; serial communications; executive sessions; amended meeting minutes; established meeting policy; recall mayor and council	<p>The city council did not violate the KOMA.</p> <p>The KOMA provides a means for the public to observe or listen to members of public bodies discuss and make decisions concerning the business or affairs of the public body. While meetings must be open, the KOMA does not require that the public be allowed to speak during a meeting.</p> <p>Members of a public body cannot discuss matters and make decisions outside of an open meeting. Whether a series of communications held outside an open meeting (“serial communications”) is a violation of the KOMA is very fact specific, and each situation must be decided on its facts. Generalized allegation about the lack of executive sessions being “proof enough” that there must be a violation of the KOMA, without more, does not state a violation of the KOMA.</p> <p>The KOMA does not require that a public body maintain meeting minutes or set out any requirements for the content of meeting minutes except with regard to executive sessions. Otherwise, the content of the meeting minutes is a discretionary decision to be made by the public body.</p> <p>Recall is not a remedy provided for by the KOMA.</p>
USD 467 Board of Education (Leoti)	KOMA – failure to meet with parent in executive session	<p>The board of education did not violate the KOMA.</p> <p>A public body may recess an open meeting for an executive session for a limited number of statutory reasons. The decision to do so is discretionary.</p>

Kansas Open Meetings Act Complaints, continued

Public Body or Agency	Alleged Violation(s)	Resolution
Abilene City Commission	KOMA – serial communications	<p>The commission did not violate the KOMA.</p> <p>Interactive communications in a series or “serial communication,” are open if they collectively involve a majority of the membership of the public body or agency, share a common topic of discussion concerning the business or affairs of the public body or agency, and are intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the public body or agency. The communications described did not meet all the elements of a serial communication.</p>
Randy Dalke and Kent Becker, Marion County Commissioners	KOMA – serial communications; held meeting to interview job candidate without providing notice	<p>The commissioners did not violate the KOMA.</p> <p>It is not a violation of the KOMA for a majority of the commission to independently attend a meeting or gathering concerning county business so long as the members do not engage in a discussion about county business. Where there is no discussion or interactive communication between the members who are present, there is no KOMA meeting, and no meeting notice is required.</p>
City of Pittsburg – Planning Commission / Board of Zoning Appeals	KOMA – failure to comply with zoning statutes, including notice	<p>The Planning Commission and Board of Zoning Appeals did not violate the KOMA.</p> <p>The investigative and enforcement power granted by the KOMA does not extend to reviewing whether the commission complied any zoning statutes or regulations.</p> <p>There is no authority to extend the statutory deadline to void action.</p> <p>Under the KOMA, notice must be furnished to any person or organization requesting meeting notice(s). The meeting notice must provide the date, time and location of the meeting, and be given within a “reasonable time.” What is reasonable depends on the circumstances. Notably, the KOMA does not contain any requirement that notice be provided to the general public or published in advance of the meeting, such as by posting on a public body’s website, in a newspaper, or on the radio. To establish a violation for failure to provide notice of a meeting, there must have been a prior request for notice. A pattern of providing courtesy notice does not create a duty to provide it. Complainant never requested notice of the PC/BZA meetings.</p>

Kansas Open Meetings Act Complaints, continued

Public Body or Agency	Alleged Violation(s)	Resolution
Hartford City Council	KOMA – improper use of executive sessions to discuss bids for demolishing a house	<p>The city council did not violate the KOMA.</p> <p>A public body may recess into executive session for limited statutory reasons. This does not include discussing the demolition of a house. The council did not improperly discuss the house demolition during its executive session. However, the manner in which the council recessed into executive session led to the impression that it might be recessing for an improper justification, <i>i.e.</i>, to discuss which bid to accept. This office contacted the city attorney to bring this matter to his attention so that he could help the council avoid such confusion in the future.</p>
USD 506, Labette County	KOMA – failure to allow public comment; improperly allowed private citizen to participate in executive session for nonelected personnel	<p>The board of education did not violate the KOMA.</p> <p>The KOMA does not require a public body to provide the opportunity for public comment.</p> <p>The board had the discretion to hold an executive session to discuss personnel matters of nonelected personnel. This is a statutorily recognized justification. The board was permitted to invite the employee and another individual to attend the executive session to aid the board’s discussion and consideration of the issues concerning the employee.</p>

Kansas Open Meetings Act Complaints, continued

Public Body or Agency	Alleged Violation(s)	Resolution
Neosho County Commission	KOMA – binding action in executive session; discussed matters not identified in the call for a special meeting; revealed matters discussed during executive session	<p>The commission did not violate the KOMA.</p> <p>A public body cannot take binding action in executive session. No information or documentation provided to show or establish the commission discussed improper matters or took binding action in executive session.</p> <p>It is not a violation of the KOMA for a public body to discuss matters that are not identified in an agenda of an open meeting. An agenda may be amended during a meeting to discuss matters arising at the last minute. The provisions of K.S.A. 19-206 govern special meetings of a board of county commissioners. Whether a county commission complied with this statute is outside the scope of the KOMA.</p> <p>It is not a violation of the KOMA to reveal what was discussed during an executive session. However, if the matter is privileged, discussing the matter outside of an executive session may waive the privilege. Additionally, some matters, such as those involving discussions of employee/personnel matters, should remain confidential so as not to violate an individual’s rights or personnel policies adopted by the public body. Discussing such confidential matters outside of an executive session may violate personnel policies or other rights, but is not a violation of the KOMA. If matters discussed during an executive session are routinely revealed, it may call into question the need for the executive session itself. Members of a public body must carefully consider the need for an executive session and whether any matters discussed during an executive session should be publicly revealed.</p>

Kansas Open Meetings Act Complaints, continued

Public Body or Agency	Alleged Violation(s)	Resolution
Greenwood County Commission	KOMA – improper topics discussed during executive session; binding action in executive session; redistricting—is commission operating as a 3 or 5 person commission; no official notice given when two commissioners recently attended a training	<p>The commission did not violate the KOMA.</p> <p>The KOMA does not address redistricting or elections, the addition of members to a public body, or when new members may take a seat on a public body. These issues are generally addressed separately by Kansas law.</p> <p>The complainant, a member of the media, did not respond to a request for clarification or supporting documents regarding the remainder of the concerns.</p>
Rural Water District #2 (Russell County)	KOMA – failure to hold annual meeting for 10 years; imposed rate increase without informing district members	<p>The district did not violate the KOMA on matters related to the failure to hold an annual meeting.</p> <p>The KOMA does not provide a means to enforce the separate statutory requirement that the district board meet annually or provide notice. The failure to do so may be a violation of the district’s bylaws or K.S.A. 82a-618, but is not a violation of the KOMA.</p> <p>The complainant did not respond to a request for clarification or supporting documents regarding the remainder of the concerns.</p>
Olathe City Council	KOMA – failure to hold public vote to adopt ordinance	The complainant did not respond to a request to complete a complaint form.
Seward County Commission	KOMA – serial communications	The complainant did not respond to a request to complete a complaint form.

Kansas Open Meetings Act Complaints, continued

Public Body or Agency	Alleged Violation(s)	Resolution
Shawnee Mission School Board President Brad Stratton	KOMA – board president meeting one-on-one with constituent	The school board president did not violate the KOMA. An individual is not a body or group, and thus cannot violate the KOMA. A member of a public body may meet individually with a constituent without violating the KOMA.
Coffeyville City Commissioners Paul Bauer, Chris Williams and Justin Martin	KOMA – meeting minutes do not reflect all the discussions held to modify city code	The commission did not violate the KOMA. A public body is only required to keep meeting minutes when it recesses into executive session. It is up to a public body to determine the form and content of its meeting minutes. Unless it recesses into executive session for a statutorily recognized justification, a public body must discuss the business or affairs of the body; it must always take binding action in an open meeting. When it does so, it does not violate the KOMA.
Lincoln County Commission	KOMA – commission discussed him and his position when he was not present	The commission did not violate the KOMA. A public body may discuss job positions without a particular employee being present. Although an employee may desire any specific discussion to be held in executive session, the decision to hold an executive session is discretionary. Although other laws or policies concerning privacy or confidentiality may need to be considered when deciding on the need for an executive session, the KOMA never requires a public body to recess into executive session.
City of Toronto Mayor Randy Schumacher	KOMA – failure to vote to accept two council members’ resignations; voting when there was not a quorum in violation of K.S.A. 15-106	The complainant did not respond to a request for clarification and additional information/supporting documentation.
USD 234 Board of Education (Fort Scott)	KOMA – approved contract to purchase real estate without public discussion	The complainant did not respond to a request for clarification and additional information/supporting documentation.

Kansas Open Records Act Complaints

COMPLAINTS AGAINST STATE AGENCIES RESULTING IN CORRECTIVE ACTION

Kansas Department of Aging and Disability Services

Complaint: A individual filed a complaint with this office alleging that KDADS violated the KORA by failing to respond to his request for records.

Resolution: Upon review, it was determined that the complainant initially sent his KORA request to the wrong place. After he corrected this, the request was misdirected or misfiled by KDADS due to a clerical error and not provided to its KORA officer for handling. The complainant sent a follow up letter, which was properly processed, but without access to the earlier request, the department had no frame of reference to respond. When the complainant sent another KORA request, the department received and timely responded with the records he was seeking. Because KDADS agreed to provide the complainant with the records, waived any fees associated with making the records available, and agreed to review its processes to ensure that KORA requests are properly identified and processed, no formal enforcement action was taken.

Kansas Secretary of State's Office

Complaint: An individual filed two complaints with this office alleging that the KSOS violated the KORA. The first claimed that the KSOS failed to timely respond to his KORA request. The second claimed that the KSOS failed to provide the information within business three days and failed to include a specific record.

Resolution: Upon review, it was determined that the complainant initially communicated with the KSOS without mentioning the KORA or using the established KORA email account. When he later made a KORA request for a list, he received a prompt response that the request was received and the KSOS was working on locating the record. The responding staff, however, learned that the complainant had previously declined a copy of the only available list because it was outdated and took no further action. This violated the KORA. Once the matter was brought the attention of the KSOS, the list was emailed to the complainant. The complainant later sought other records. He received a response the same day indicating the KSOS would begin searching for the records. Five documents were located in response, but due to a misunderstanding and the lack of an integrated system for searching for records, only two were sent to him. This office found that the KSOS violated the KORA by failing to provide existing records that were responsive to the request. The failure to provide the records within three business days of the request, however, did not violate the KORA, which only requires the public agency to *act* on the request in that time but contemplates that a public agency will need time to search for responsive records, and so provides that the records custodian must explain the reason for delay and when the record will be available. The complainant ultimately received the responsive records, and this office

Kansas Open Records Act Complaints, continued

followed up in writing with the KSOS to ensure it understood its KORA obligations. Based on this resolution, no formal enforcement action was taken.

Kansas State University

Complaint: An individual filed a complaint with this office alleging that the university violated the KORA by estimating an unreasonable fee for his records request.

Resolution: This office contacted the university about the complaint and asked for more detail on the estimated fee. Upon review, the university conceded that it may have overestimated the amount of time it would take to conduct a thorough search for the records and agreed to revise its estimated fee. The complainant was advised of the revised fee estimate but did not inform the university how he wished to proceed. No further enforcement action was taken.

Lansing Correctional Facility and Brett Peterson

Complaint: An individual filed a complaint with this office alleging that LCF violated the KORA by failing to provide him with the records he requested.

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. This office then determined that LCF received, timely acknowledged and searched for the employee and contract staff rosters the complainant was seeking. LCF did not have rosters for contract staff and did not have employee rosters for the time period the complainant was seeking. Although not required to, LCF staff sent the complainant's KORA request to the Kansas Department of Corrections – Central Office to see if staff there could locate records. KDOC – CO staff searched for records, found some records, but mistakenly concluded they were outside the time period of the request. Unfortunately, the complainant was not advised of this due to a miscommunication. During the investigation, this office requested that the KDOC again search for responsive records. KDOC – CO staff were able to locate records that were responsive to a portion of the complainant's request. The records were not produced previously due to confusion over the time frame of the complainant's request. Recognizing that the response to the complainant's KORA request was somewhat incomplete due to miscommunication and because the records should have been located, KDOC – CO staff offered to and did provide the records to the complainant free of charge. Based on the complainant's requested remedy to receive the records, this office determined that this was a reasonable resolution to this matter, and no formal enforcement action was taken.

University of Kansas

Complaint: The managing editor of the student newspaper filed a complaint with this office alleging that the university violated the KORA by improperly redacting records.

Resolution: This office contacted the university, which advised that it had provided the complainant with an unredacted copy of the records he was seeking and waived any associated fees. Thus, no further formal enforcement action was taken.

**COMPLAINTS AGAINST CITIES
RESULTING IN CORRECTIVE ACTION**

City of Elwood

Complaint: A member of the media filed a complaint with this office alleging that the city violated the KORA by failing to respond to his request for records. As a remedy, he wanted to receive the requested records.

Resolution: This office contacted the city attorney about the complaint, who advised that because this was the first KORA request it had ever received, the clerk was concerned it was suspect and did not respond. After the complainant sent a follow up email, the city attorney responded with the requested records. This office noted during its review that the city did not have procedures in place to help it respond to KORA requests. The city agreed to take remedial action and did so, including establishing a written process to ensure that city employees identify and promptly act on KORA requests. Since the complainant received the requested records and the city promptly complied with the request for remedial action, no formal enforcement action was taken.

City of Overland Park

Complaint: An individual filed a complaint with this office alleging that he did not receive a response to his KORA request.

Resolution: Upon review, this office determined that the city inadvertently failed to respond to the KORA request because it was included in and looked similar to the individual's requests for a hearing on code compliance issues. The city apologized to the individual, provided the records, and provided additional training to its staff in the Community Services Division, which received the request. Because the city took prompt remedial action, including acknowledging its mistake, training, and providing the records as requested by the individual, no further formal enforcement action was warranted.

Salina City Commission

Complaint: A city commissioner filed a complaint with this office alleging that the commission violated the KORA by improperly redacting a record he requested, unreasonably delaying its response to the records request, and failing to give a detailed explanation of when the records would be available.

Resolution: Upon review, this office found that the commission violated the KORA when it redacted a letter based on K.S.A. 45-221(a)(20), which did not apply. This office requested the unredacted letter be provided to the complainant by the most expedient means available. Because the commission promptly complied with the request for remedial action, no formal enforcement action was taken. As to the alleged delay in responding to the request, this office did not find evidence of a significant or unreasonable delay. The complainant received a response to his request within three business days as required by the KORA. Since the complainant was a sitting member

of the commission, there were unique concerns in responding to the request. The KORA request was brought to the attention of the entire commission, which retained special counsel to advise on the request. The complainant was advised of the situation and why the city could not give an exact date of when the request would be fulfilled. When the complainant inquired about the status of the request, he received prompt responses. This office found the city's actions were reasonable under the circumstances and did not evidence a significant or unreasonable delay. No formal enforcement action was warranted.

COMPLAINTS AGAINST COUNTIES RESULTING IN CORRECTIVE ACTION

Greenwood County

Complaint: An individual filed a complaint with this office alleging that the county violated the KORA by failing to respond to his records request.

Resolution: Upon review, this office found the clerk's office violated the KORA by failing to timely respond to the request and failing to take action on the request. The clerk's office admitted it did not respond within three business days of receiving the KORA request. After the complainant contacted the clerk's office for an explanation, the clerk acknowledged receiving the request but did not state when the records would be available or explain the reason for the delay. The clerk then failed to take any further action in response to this request. This office requested the county take remedial action, including providing the records to the complainant by the most expedient means available, obtaining at least one hour of training on the provisions of the KORA, and taking steps to ensure that records requests are identified and handled promptly in the future. The county promptly satisfied these remedial action requests, and no formal enforcement action was taken.

Marion County Clerk

Complaint: A county commissioner filed a complaint with this office alleging that the county clerk violated the KORA by denying her request for an employee's timesheets.

Resolution: Upon review, this office determined that the clerk's office denied the KORA request based on the provisions of K.S.A. 45-221(a)(4) concerning personnel records, performance ratings, or individually identifiable records pertaining to employees. This office found this exemption applied to most of the timesheets requested, and so there was no violation of the KORA in declining to release them. The employee's timesheet for one specific month, however, was discussed by the commission during a public meeting in enough detail as to render it open. Failure to release this record upon request violated the KORA. This office requested that the clerk's office provide the timesheet to the commissioner by the most expedient means available. This clerk's office promptly complied with this request, and no formal enforcement action was taken.

Kansas Open Records Act Complaints, continued

Sedgwick County

Complaint: An individual filed a complaint with this office alleging that the county violated the KORA by failing to provide all records responsive to his request.

Resolution: Upon review, this office found that, with one exception, the county provided the complainant with all the records that met the language and specific time frame used in his KORA request. The county advised that due to an oversight one letter was not provided and agreed to provide the complainant with a copy of the letter. The record was provided, and no formal enforcement action was taken.

COMPLAINTS AGAINST OTHER AGENCIES RESULTING IN CORRECTIVE ACTION

Cowley College

Complaint: A member of the media filed a complaint with this office alleging that the college violated the KORA by estimating an unreasonable fee to search for records.

Resolution: This office consulted with the college's attorney, who advised that the records had been provided to the complainant and the fee waived. The college also held a training session on the KORA and the KOMA. Because the college provided the complainant with the records she was seeking and waived any fees associated with making the records available, as well as held a training concerning both the KORA and the KOMA, no formal enforcement action was taken.

Garden City Community College

Complaint: An individual filed a complaint with this office alleging that the college violated the KORA by failing to provide all requested records.

Resolution: This office contacted the college's attorney, who advised that it was delayed in providing the records in response to the request due to the recent resignation of its freedom of information officer. This office monitored the matter, and the complainant later confirmed that, with the exception of one possible record, she had received all she requested. The college believed the record was provided, but was willing to continue to work with the complainant if it was not. Due to this resolution, no formal enforcement action was taken.

REFERRALS TO COUNTY OR DISTRICT ATTORNEY OFFICES

- **Winchester City Council (Jefferson County)** – failure to provide copies of meeting minutes.
- **Kansas Bureau of Investigation and Pottawatomie County Attorney (Shawnee County)** – failure to provide records.
- **Olathe School District (Johnson County)** – failure to provide records.

COMPLAINTS RESULTING IN A FINDING OF NO VIOLATION

Public Body or Agency	Alleged Violations	Resolution
Lincoln County Sheriff's Office	KORA – failure to provide requested records	<p>The sheriff's office did not violate the KORA.</p> <p>The KORA does not require public agencies to obtain records from other sources or create records in order to comply with its provisions. It is not a violation of the KORA if a record does not exist or is not maintained by a public agency, or if there are not more of the types or categories of records a requester is seeking. A public agency cannot provide a requester with records it does not have or cannot locate.</p>
Kansas Department of Corrections and El Dorado Correctional Facility	KORA – did not receive all requested records	<p>The KDOC and EDCF did not violate the KORA.</p> <p>The KORA does not govern what records a public agency must create or maintain; it also does not require public agencies to obtain records from other sources or create records in order to comply with its provisions.</p> <p>It is not a violation of the KORA if a record does not exist or is not maintained by a public agency, or if there are not more of the types or categories of records a requester is seeking.</p> <p>The KORA also does not require a public agency to guess at the meaning of a request, although it may ask for clarification of a request. A requester must ensure that the request submitted to a public agency clearly conveys what records are being sought.</p>
Kansas Department of Revenue	KORA – exemptions to disclosure	The complainant did not respond to a request for clarification and additional information/supporting documentation.

Kansas Open Records Act Complaints, continued

Public Body or Agency	Alleged Violations	Resolution
Linn County Appraiser's Office	KORA – failure to provide requested records and answer clarifying questions	<p>The appraiser's office did not violate the KORA.</p> <p>The KORA does not require a public agency to answer questions or to create a record to respond to a KORA request. Although a public agency is not required to create a record to respond, the appraiser's office worked with the state Property Valuation Division to create a record with the information requested so it could be provided in the format requested; the complainant received the requested records.</p>
Linn County Appraiser	KORA – failure to provide records; failure to permit use of flash drive; excessive fees; failure to waive fees; failure to reconfigure public access computer	<p>The appraiser's office did not violate the KORA.</p> <p>The KORA permits a public agency to seek advance payment of reasonable fees to make records available to a requester. A public agency may recoup fees for time spent searching for, examining, redacting, copying, mailing or otherwise making the records available. Fees in this matter were reasonable; appraiser's office would have to individually access 796 distinct sets of records to respond to the request.</p> <p>The KORA does not require a public agency to electronically make copies of public records available by allowing a person to insert, connect or otherwise attach an electronic device to the public agency's computer system.</p> <p>The KORA does not have a "public interest" exception that requires waiver of fees.</p> <p>It is unclear whether the KORA would require a public agency to reconfigure a public access computer so public can view public records. Declined to consider whether the reconfiguring is required to permit the complainant and the appraiser's office to consult about such concerns.</p>

Kansas Open Records Act Complaints, continued

Public Body or Agency	Alleged Violations	Resolution
City of Independence, Kansas	KORA – unreasonable fees	<p>The city did not violate the KORA.</p> <p>The KORA permits a public agency to seek advance payment of reasonable fees to make records available to a requester. A public agency may recoup fees for time spent searching for, examining, redacting, copying, mailing or otherwise making the records available.</p> <p>Based on the facts, the fees were reasonable. Complainant was asked to clarify the request in an attempt to reduce the requested fees.</p>
Cowley College	KORA – excessive fees	<p>The college did not violate the KORA.</p> <p>The only way a public agency can locate records to produce in response to a KORA request is to search for them. The KORA contemplates such searches. It also permits a public agency to charge a reasonable fee to respond to a KORA request. Fees for copies shall not exceed the actual cost, including the cost of staff time. This language contemplates and allows a public agency to charge fees for staff time spent in searching for, retrieving, reviewing, redacting and preparing the records to be provided to a requester. Based on the request, and the explanation the college provided, the fee was not unreasonable or excessive. This is true notwithstanding the fact that ultimately the college was not able to locate any responsive records.</p>
Sherman County Sheriff Brian Pianalto	KORA – failure to respond to records request	The complainant did not respond to a request for clarification and additional information/supporting documentation.

Kansas Open Records Act Complaints, continued

Public Body or Agency	Alleged Violations	Resolution
Cowley College	KORA – failure to provide records; unreasonable fees	<p>The college did not violate the KORA.</p> <p>The KORA permits a public agency to seek advance payment of reasonable fees to make records available to a requester. A public agency may recoup fees for time spent searching for, examining, redacting, copying, mailing or otherwise making the records available.</p> <p>Based on the facts, there was no basis to conclude estimated fees were unreasonable or excessive. Because the college’s explanation provided to complainant was somewhat lacking in detail that would have helped to explain the staff efforts necessary to conduct the search for the records being sought, this office took steps to bring this matter to the attention of the college. The college was willing to work with the complainant to narrow the scope of date range of the request in an attempt to reduce the estimated fees.</p>
Kansas Department for Aging and Disability Services	KORA – failure to provide records	<p>The department did not violate the KORA.</p> <p>The key to triggering the procedural requirements and protections of the KORA is the receipt of a request that clearly invokes its provisions. A public agency cannot comply with the KORA if it does not receive a request that makes it clear that the requester is invoking the KORA and its procedural provisions.</p>
Kansas State Board of Nursing, Executive Director Mary Blubaugh, Assistant Attorney General Staff Attorney	KORA – failure to respond	<p>The board did not violate the KORA.</p> <p>The key to triggering the procedural requirements and protections of the KORA is the receipt of a request that clearly invokes its provisions. A public agency cannot comply with the KORA if it does not receive a request that makes it clear that the requester is invoking the KORA and its procedural provisions. Here, complainant said in a letter that he would file a KORA request if the board did not send the records in response to his letter.</p>

Kansas Open Records Act Complaints, continued

Public Body or Agency	Alleged Violations	Resolution
Hutchinson Correctional Facility	KORA – failure to provide records	<p>The facility did not violate the KORA.</p> <p>The KORA does not require a public agency to create records to respond to a request or do research to respond to questions posed by a requester. A public agency must only produce records in existence at the time of the request, subject to any statutory restrictions.</p>
Unified Government of WyCo/KCK	KORA – unreasonable fees; denied access to records; UG hired a morally corrupt fire chief; police chief nurturing hostile work environment; taxes not directed to needed fire/police and neighborhood infrastructure matters	The complainant did not respond to a request for clarification and additional information/supporting documentation.

Kansas Open Records Act Complaints, continued

Public Body or Agency	Alleged Violations	Resolution
Kansas Dept. of Health and Environment	KORA – failure to provide records older than 70 years	<p>The department did not violate the KORA.</p> <p>The KORA describes how the public may inspect or obtain copies of public records, unless they are closed by some other statute or rule. It does not govern what records a public agency must create or maintain, and does not require public agencies to obtain records from other sources or create records in order to comply with its provisions. It is not a violation of the KORA if a record does not exist or is not maintained by a public agency, or if there are not more of the types or categories of records a requester is seeking.</p> <p>Even if a public agency has a record, not all records it maintains are required to be open. The KORA sets out some 55 exemptions to disclosure. One such exemption provides that a public agency shall not be required to disclose records “the disclosure of which is specifically prohibited or restricted by . . . state statute.” K.S.A. 65-2422d governs the disclosure of the vital statistics records. Under this statute, it is unlawful for KDHE to release any information contained in vital statistics records except as authorized by the Uniform Vital Statistics Act.</p>
Doniphan County Sheriff’s Office	KORA – failure to respond	<p>The sheriff’s office did not violate the KORA.</p> <p>A requester must take care to ensure a KORA request is sent to an existing mail or email address. A public agency cannot respond to a KORA request that is misdirected.</p>
Quenemo City Council President Dennis Devin, City Treasurer Michelle Miles, and City Clerk Peggy Manning	KORA – failure to provide records	The complainant did not respond to a request for clarification and additional information/supporting documentation.

Kansas Open Records Act Complaints, continued

Public Body or Agency	Alleged Violations	Resolution
Kansas Department of Corrections, El Dorado Correctional Facility	KORA – failure to provide requested records	The complainant did not respond to a request to complete a complaint form.
Kansas Secretary of State’s Office	KORA – failure to respond	<p>The secretary of state’s office did not violate the KORA.</p> <p>The KORA does not require a public agency to answer questions asking for information. It also does not require a public agency to create records to respond to a KORA request or do research to respond to questions posed by a requester. A public agency must only produce records in existence at the time of the request, subject to any statutory restrictions.</p>
Kansas Department of Corrections, El Dorado Correctional Facility	KORA – failure to provide copies of personal injury/property claims/grievances as required by internal procedure and regulation; failure to respond	<p>The department and the facility did not violate the KORA.</p> <p>The KORA does not provide a means to enforce any requirements established by a KDOC internal policy or administrative regulation.</p> <p>Under the KORA, a public agency must act upon a records request as soon as possible, but not later than the end of the third business day following the date the request was received. An individual cannot complain about a failure to respond before the expiration of the three business days.</p>
USD 211 Board of Education (Norton)	KORA – failure to provide records	<p>The board did not violate the KORA.</p> <p>A public agency must provide copies of public records in response to a KORA request. The KORA does not require a public agency to create a record in order to respond to requests or to answer questions asking for information. Likewise, it does not require a public agency to obtain records it does not have in order to respond to a KORA request. Records solely possessed by private entities, persons or groups are not subject to the KORA.</p>

Kansas Open Records Act Complaints, continued

Public Body or Agency	Alleged Violations	Resolution
William Newton Hospital (Winfield)	KORA – failure to provide requested records	<p>This office declined to find a violation of the KORA based on the facts.</p> <p>The key to triggering the procedural requirements and protections of the KORA is the receipt of a request that clearly invokes its provisions. This is especially true if there is a question about whether an entity is a public agency within the meaning of the KORA.</p>
Jackson County Sheriff's Office	KORA – failure to provide records	Declined to investigate complaint due to private KORA enforcement action filed by the complainant on same issues, facts and circumstances (declaratory judgment and mandamus actions).
Jackson County Clerk's Office	KORA – failure to have brochure required by K.S.A. 45-227; clerk does not understand KORA	Declined to investigate complaint due to private KORA enforcement action filed by the complainant on same issues, facts and circumstances (declaratory judgment and mandamus actions).
Jackson County Attorney's Office	KORA – failure to take complaint and investigate	Declined to investigate complaint due to private KORA enforcement action filed by the complainant on same issues, facts and circumstances (declaratory judgment and mandamus actions).
Wyandotte County District Attorney's Office	KORA – failure to provide records	<p>The district attorney's office did not violate the KORA.</p> <p>The KORA applies to public records that are made, maintained, kept by or in the possession of a public agency as defined by the KORA. The KORA does not require a public agency to create or maintain records. It also does not require a public agency to answer questions asking for information. A public agency must only produce records in existence at the time of the request, subject to any statutory restrictions. An attorney's "mental list" of cases is not a record subject to disclosure under the KORA.</p>

Kansas Open Records Act Complaints, continued

Public Body or Agency	Alleged Violations	Resolution
Goodland Police Department	KORA – failure to provide records	<p>The department did not violate the KORA.</p> <p>The KORA applies to public records that are made, maintained, kept by or in the possession of a public agency as defined by the KORA. A public agency must only produce records in existence at the time of the request, subject to any statutory restrictions. One such restriction or exemption to disclosure concerns criminal investigation records; a public agency is not required to disclose such records. Audio or video recordings made and retained by law enforcement using a body or vehicle camera are considered criminal investigation records. Ordinarily, only a court can compel a public agency to produce criminal investigation records. However, there are special rules governing body worn camera and vehicle camera video recordings. K.S.A. 45-254 provides that a person who is the subject of any such recording may request to listen to any audio recording or view any video recording made by a body or vehicle camera; a law enforcement agency must allow the person to listen to or view the recording within 20 days after making the request; it may also charge a reasonable fee. This section does not require a law enforcement agency to make copies of any available recordings.</p> <p>Although the language in K.S.A. 45-254 is clear in providing that an individual may only view, but not obtain copies of video recordings, there is an additional provision in the KORA that governs recordings. K.S.A. 45-219(a) provides in part that a public agency shall not be required to provide copies of any audio or visual items or devices unless such items or devices were shown or played to a public meeting of the governing body thereof.</p>

Kansas Open Records Act Complaints, continued

Public Body or Agency	Alleged Violations	Resolution
Topeka Police Department	KORA – failure to provide records	<p>The department did not violate the KORA.</p> <p>The KORA applies to public records that are made, maintained, kept by or in the possession of a public agency as defined by the KORA. A public agency must only produce records in existence at the time of the request, subject to any statutory restrictions. One such restriction or exemption to disclosure concerns criminal investigation records; a public agency is not required to disclose such records. Audio or video recordings made and retained by law enforcement using a body or vehicle camera are considered criminal investigation records. Ordinarily, only a court can compel a public agency to produce criminal investigation records. However, there are special rules governing body worn camera and vehicle camera video recordings. K.S.A. 45-254 provides that a person who is the subject of any such recording may request to listen to any audio recording or view any video recording made by a body or vehicle camera; a law enforcement agency must allow the person to listen to or view the recording within 20 days after making the request; it may also charge a reasonable fee. This section does not require a law enforcement agency to make copies of any available recordings.</p> <p>Although the language in K.S.A. 45-254 is clear in providing that an individual may only view, but not obtain copies of video recordings, there is an additional provision in the KORA that governs recordings. K.S.A. 45-219(a) provides in part that a public agency shall not be required to provide copies of any audio or visual items or devices unless such items or devices were shown or played to a public meeting of the governing body thereof.</p>
El Dorado Correctional Facility	KORA – failure to provide records	The complainant did not respond to a request for clarification and additional information/supporting documentation.
Seward County Commission	KORA – unreasonable fees / copying costs	The complainant did not respond to a request to complete a complaint form or for clarification and additional information/supporting documentation.

Kansas Open Records Act Complaints, continued

Public Body or Agency	Alleged Violations	Resolution
Sedgwick County Clerk's Office	KORA – failure to provide records	<p>The clerk's office did not violate the KORA.</p> <p>The key to triggering the KORA is the receipt of a request for records that clearly indicates that its provisions are being invoked. While a verbal request may trigger the KORA, a public agency may ask that the request be reduced to writing. The request must still ask for records, not for information or answers to questions. The KORA does not require a public agency to answer questions about the public records it holds. A public agency is only required to provide copies of public records to a requester.</p>
City of El Dorado	KORA – failure to locate and provide records	The complainant did not respond to a request to complete a complaint form or for clarification and additional information/supporting documentation.
Mental Health America of the Heartland	KORA – failure to provide unredacted copy of records	The complainant did not respond to a request to provide supporting documentation mentioned in the complaint.

Kansas Open Records Act Complaints, continued

Public Body or Agency	Alleged Violations	Resolution
<p>Neosho County Commission and County Counselor Seth A. Jones</p>	<p>KORA – failure to provide records</p>	<p>The commission did not violate the KORA.</p> <p>The KORA applies to public agencies. However, an individual is not included in the definition of a public agency and cannot individually be held responsible for the actions of a public agency.</p> <p>A public agency is not required to disclose records that are made, maintained or kept by an individual who is a member of the governing body of any political or taxing subdivision of the state; such records are specifically excluded from the scope of the KORA. Thus, if a specific email or other correspondence is exclusively made, maintained or kept only by an individual commissioner, it is not a “public record” within the meaning of the KORA. Because such records are excluded from the definition of “public record,” they are not subject to disclosure in response to a KORA request.</p> <p>A public agency is not required to disclose correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual. The KORA allows a public agency the discretion to make the records open and available to the public or to close the record(s) based on an identified exemption.</p> <p>Records created and exchanged during the course of an attorney-client relationship are not subject to disclosure unless a client waives the privilege. Additionally, the duty of confidentiality imposed by Kansas Supreme Court Rule 226, Section 1.6, Client-Lawyer Relationship: Confidentiality of Information, is all encompassing; thus a public agency is not required to redact any records that are covered by this rule. However, a public agency cannot simply transfer all of its public records to its lawyer as a means to escape the purpose and scope of the KORA. The public policy behind the KORA is clear, and each public agency must ensure that it complies with the KORA’s purpose and intent.</p>

Kansas Open Records Act Complaints, continued

Public Body or Agency	Alleged Violations	Resolution
Garden City Community College	KORA – failure to provide requested records	The complainant did not respond to a request for clarification and additional information/supporting documentation.

NOTE: In addition to the foregoing, the Office of the Attorney General received 15 complaints using the KOMA/KORA complaint form that did not state a violation of the KOMA or the KORA.

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	No KOMA/KORA complaints to report
Barton	M. Levi Morris	No KOMA/KORA complaints to report
Bourbon	Jacquie Spradling	No KOMA/KORA complaints to report
Brown	Kevin M. Hill	No KOMA/KORA complaints to report
Butler	Darrin C. Devinney	No report filed
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 report filed
Cheyenne	Leslie Beims	No KOMA/KORA complaints to report
Clark	Allison D. Kuhns	No KOMA/KORA complaints to report
Clay	Richard E. James	No report filed
Cloud	Robert A. Walsh	No report filed
Coffey	Wade H. Bowie II	No KOMA/KORA complaints to report
Comanche	Allison D. Kuhns	No KOMA/KORA complaints to report
Cowley	Larry R. Schwartz	No KOMA/KORA complaints to report
Crawford	Michael Gayoso Jr.	No KOMA/KORA complaints to report
Decatur	Steven W. Hirsch	No KOMA/KORA complaints to report
Dickinson	Andrea Purvis	No KOMA/KORA complaints to report
Doniphan	Charles D. Baskins	No KOMA/KORA complaints to report
Douglas	Charles E. Branson	No KOMA/KORA complaints to report
Edwards	Mark Frame	No KOMA/KORA complaints to report

Counties Reporting KOMA/KORA Complaints, continued

County	County or District Attorney	Report
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 report filed
Finney	Susan H. Richmeier	No KOMA/KORA complaints to report
Ford	Kevin B. Salzman	A member of the Dodge City Community College Board of Trustees reported that during an executive session, the board discussed matters not on the agenda and not related to the reason for the executive session. KOMA complaint referred to the Attorney General's Office at the request of the complainant. (The disposition for this case will be reported in the FY 2020 Annual Report.) No 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 report filed
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 report filed
Jefferson	Josh Ney	No KOMA/KORA complaints to report

Counties Reporting KOMA/KORA Complaints, continued

County	County or District Attorney	Report
Jewell	Darrell E. Miller	No KOMA/KORA complaints to report
Johnson	Stephen M. Howe	<p>On January 11, 2019, a member of the Olathe School District Board of Education self-reported a potential violation of KOMA by initiating a discussion with a fellow board member to discuss concerns about an item added to an agenda. On May 24, 2019, the office advised the individual there was no violation of the KOMA.</p> <p>On January 16, 2019, this office received a KOMA complaint from an individual alleging the Overland Park City Council had secret discussions during the process of naming a city park. On May 24, 2019, the office advised the individual there was no violation of the KOMA.</p> <p>No KORA complaints to report.</p>
Kearny	Kenny Estes	No KOMA/KORA complaints to report
Kingman	Matthew W. Ricke	<p>A member of the media filed a KOMA complaint alleging that the county commission improperly held executive sessions using the justification of trade secrets. This matter was referred to the Attorney General's Office for investigation. (The disposition for this case will be reported in the FY 2020 Annual Report.)</p> <p>No KORA complaints to report.</p>
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	Margaret Mahoney	No report filed

Counties Reporting KOMA/KORA Complaints, continued

County	County or District Attorney	Report
Lyon	Marc Goodman	A member of the media filed a complaint alleging that he was denied access to a meeting of Flint Hills Community Health Care. Following an investigation, the county attorney concluded that FHCHC violated the KOMA. The FHCHC was required to re-open its board meetings to the public.
Marion	Joel Ensley	No report filed
Marshall	Meghan K. Voracek	Two county commissioners self-reported a possible KOMA violation. The commissioners were present at a county departmental meeting. County business was not discussed by the commissioners and no decisions were made. The commissioners did not have any private discussions. They came and left separately from the meeting, and sat apart from one another at the meeting. This office concluded the commissioners did not violate the KOMA. The commissioners were provided KOMA information from the Attorney General's website. No KORA violations to report.
McPherson	Gregory T. Benefiel	No KOMA/KORA complaints to report
Meade	Clay 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	No KOMA/KORA complaints to report
Morris	Laura E. Allen	No KOMA/KORA complaints to report
Morton	Adam T. Carey	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 M. Schoen	No KOMA/KORA complaints to report
Osage	Jack J. Hobbs	No report filed
Osborne	Paul S. Gregory	No KOMA/KORA complaints to report

Counties Reporting KOMA/KORA Complaints, continued

County	County or District Attorney	Report
Ottawa	Richard A. Buck	No KOMA/KORA complaints to report
Pawnee	Douglas W. McNett	No report filed
Phillips	Melissa M. Schoen	No report filed
Pottawatomie	Sherri Schuck	No KOMA/KORA complaints to report
Pratt	Tracey T. Beverlin	<p>On March 1, 2019, the Pratt County Attorney received a telephone call from an individual raising concerns that the Pratt County Commission may have violated the KOMA. Specifically, the individual had a feeling that during its November 13 and December 3, 2018, meetings, the commission acted ‘sneaky’ in the purchase of real property and didn’t think about or consider other county property that could be used for its needs; the individual was also concerned that the commission was spending money on real property without county residents voting on the matter. On April 12, 2019, the county attorney advised the complainant that after review of past meeting minutes, as well as consulting with the county counselor, county clerk and the Attorney General’s Office, he determined the commission did not violate the KOMA. The KOMA permitted the commission to meet in executive session for preliminary discussion of the acquisition of real property. The county attorney further concluded that Kansas courts have interpreted this exemption to include subjects that are inextricably intertwined with a non-exempt subject, so that, when “segregation of the materials into open and closed sessions would make coherent discussion pragmatically impossible, it is reasonable to close the entire meeting.” <i>State v. U.S.D. No. 305</i>, 13 Kan.App.2d 117 (1988).</p> <p>No KORA complaints to report.</p>
Pratt	Tracey T. Beverlin	No report filed
Rawlins	Charles A. Peckham	No KOMA/KORA complaints to report
Reno	Keith E. Schroeder	No report filed
Republic	Justin Ferrell	No KOMA/KORA complaints to report
Rice	Remington S. Dalke	No KOMA/KORA complaints to report

Counties Reporting KOMA/KORA Complaints, continued

County	County or District Attorney	Report
Riley	Barry R. Wilkerson	<p>The Manhattan City Commission self-reported that four city commissioners engaged in a conversation with each other regarding the Metropolitan Planning Organization and Flint Hills Regional Council, two organizations funded or supported by the city commission. The county attorney investigated the self-report and found that the conversation, though brief and lasting only five minutes, constituted a KOMA violation involving City Commissioners Jarred McKee, Linda Morse, Mike Dodson and Wynn Butler. The fifth member of the city commission, Usha Reddi, had departed the meeting and was not involved in the violation. It appeared this was an inadvertent violation in that it began as a conversation between Commissioner McKee and City Manager Ron Fehr and was overheard by first one commissioner and then two others and it became an interactive communication. There were no votes or final actions taken as a result of the communication. The members attended a KOMA training presented by the Kansas Attorney General’s Office on January 29, 2019.</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
Sedgwick	Marc A. Bennett	<p>No KOMA complaints to report.</p> <p>A KORA complaint alleged that the District Court Clerk’s Office refused to provide the complainant with a copy of a marriage license and the statutory citation to justify the refusal. Following review, the Clerk’s Office provided the complainant with the proper statutory justification and completed a KORA training using materials from the Attorney General’s Office.</p>
Seward	Russell W. Hasenbank	No KOMA/KORA complaints to report

Counties Reporting KOMA/KORA Complaints, continued

County	County or District Attorney	Report
Shawnee	Mike Kagay	No KOMA complaints to report. A KORA complaint alleged the 911 Coordinating Council failed to provide a copy of the requested record. Upon review it was determined there was no violation because while drafting the letter was discussed during an open meeting, at the time of the request, the letter had not yet been drafted and therefore could not have been produced.
Sheridan	Harry Joe Pratt	No report filed
Sherman	Charles F. Moser	No KOMA/KORA complaints to report
Smith	Tabitha D. Rempe 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
Stevens	Paul F. Kitzke	No KOMA/KORA complaints to report
Sumner	Kerwin L. Spencer	No KOMA/KORA complaints to report
Thomas	Rachel Lamm	No report filed
Trego	Christopher Lyon	No KOMA/KORA complaints to report
Wabaunsee	Timothy Liesmann	A citizen raised KOMA concerns about Washington Township. The citizen thought the number of township meetings per year was too low and believed notice on the meetings might be insufficient. Following review, it was determined that the KOMA was not violated. However, the all townships were reminded in writing about the KOMA's requirements, including meeting notice to requesters by letter or electronic means. No KORA complaints to report.
Wallace	Charles F. Moser	No KOMA/KORA complaints to report

Counties Reporting KOMA/KORA Complaints, continued

County	County or District Attorney	Report
Washington	Elizabeth Baskerville-Hiltgen	<p>A KOMA complaint alleged that on Monday, July 9, 2018, the Board of County Commissioners conducted a regularly scheduled board meeting. Present were the Commissioners, the County Clerk, and a reporter from the local newspaper. Following the adjournment of the meeting, the board asked a department head to stay with them and discuss the budget for that particular department. The department head and the board remained in the room, and the County Clerk waited until the room was cleared and then closed the door. Due to a conflict of interest (County Attorney represents the BOCC), a special prosecutor was appointed by the District Court for the purpose of instituting a formal inquiry and investigation into whether there was a KOMA violation. After an investigation, it was determined that items of business that should have been discussed in an open meeting were discussed in a closed session, which by a preponderance of the evidence constituted a violation of KOMA. In lieu of formal proceedings, a Consent Agreement was entered into along with a public acknowledgement that board violated the KOMA.</p> <p>No KORA complaints to report.</p>
Wichita	Laura L. Lewis	No KOMA/KORA complaints to report
Wilson	Larry Markle	No KOMA/KORA complaints to report
Woodson	Zelda Schlotterbeck	No KOMA/KORA complaints to report
Wyandotte	Mark A. Dupree, Sr.	No KOMA/KORA complaints to report

Formal Enforcement Actions

The following formal enforcement actions were taken by the attorney general's office and their requirements were satisfied during the 2019 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>.

Marshall County Board of County Commissioners

2018-OG-0001

Consent Order Entered into May 30, 2018

Requirements Satisfied July 24, 2018

Kansas Open Meetings Act; Executive Sessions

Sterling Board of Education

2018-OG-0002

Consent Order Entered into December 7, 2018

Requirements Satisfied December 11, 2018

Kansas Open Meetings Act; Executive Sessions

Kanopolis City Council

2017-OG-0003

Consent Order Entered into November 27, 2018

Requirements Satisfied December 7, 2018

Kansas Open Meetings Act; Executive Sessions

Trainings Provided

Date	Event	Location	Attendees
7/11/2018	KOMA/KORA Training - Bonner Springs Police Dept.	Bonner Springs	44
8/20/2018	KORA Training for Law Enforcement - Ellis County Sheriff's Department	Hays	45
8/23/2018	KOMA/KORA Training - Public Training	Wichita	50
8/24/2018	KOMA/KORA Training - Public Training	Fredonia	16
10/3/2018	KOMA/KORA Training - Public Training	Shawnee	30
10/8/2018	KOMA/KORA Training - Kansas County and District Attorneys Association (KCDA) Annual Conference	Manhattan	145
10/19/2018	KOMA/KORA Training - Public Training	Topeka	60
12/4/2018	KOMA Training - Kansas House of Representatives	Topeka	40
12/18/2018	KOMA/KORA Training - Marais des Cygnes Extension District	Paola	25
1/23/2019	KORA Training - Kansas Secretary of State	Topeka	5
1/29/2019	KOMA Training - Manhattan City Commission	Manhattan	50
1/29/2019	KOMA/KORA Training - Kansas State University	Manhattan	40
1/31/2019	KOMA/KORA Training - Kansas State University - a.m.	Manhattan	40
1/31/2019	KOMA/KORA Training - Kansas State University - p.m.	Manhattan	40
2/20/2019	KOMA/KORA Training - Kansas Law Enforcement Training Center (KLETC) Annual In-Service	Hutchinson	100
3/4/2019	KOMA/KORA Training - City Clerks and Municipal Finance Officers Association (CCMFOA) Annual Conference	Manhattan	50
3/6/2019	KORA Training - Kansas Criminal Justice Information System (KCJIS) User Group	Kechi	75
4/3/2019	KORA Training for Law Enforcement - McPherson Police Department	McPherson	120
5/1/2019	KOMA/KORA Training - Kansas County Clerks and Election Officials Association (KCCEO) Annual Conference	Wichita	31
5/9/2019	KOMA/KORA Training - City of Olathe	Olathe	60
5/30/2019	KOMA/KORA Training - Kansas Association of Public Information Officers (KAPIO) Annual Conference	Wichita	40
6/4/2019	KORA Training - Kansas Criminal Justice Information System (KCJIS) Annual Conference	Topeka	35
6/14/2019	KOMA/KORA Training - City Attorneys Association of Kansas (CAAK) Spring Meeting	Wichita	80
6/21/2019	KOMA/KORA Training - Kansas Association of County Counselors (KACC) Annual Conference	Salina	50
6/23/2019	KOMA/KORA Training - Kansas JAG Association Conference	Topeka	32



Open Government Enforcement Unit

120 SW 10th Ave, 2nd Floor

Topeka, KS 66612-1597

(785) 296-4542

(785) 291-3767 (Fax)

www.ag.ks.gov/open-gov