

# 2021

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

Kansas Fiscal Year 2021  
(July 1, 2020 – June 30, 2021)

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



**KANSAS  
ATTORNEY GENERAL**

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August 2022

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 2021 is the product of that statutory requirement, and contains the following information:

- A list of 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 reports submitted by county and district attorneys throughout the state regarding both KOMA and KORA complaints they resolved during the reporting year.
- The enforcement actions taken by the attorney general’s office during the reporting year.
- 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

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# Kansas Open Meetings Act Complaints

## COMPLAINTS AGAINST STATE AGENCIES RESULTING IN CORRECTIVE ACTION

There were no corrective actions taken against state agencies during FY 2021.

## COMPLAINTS AGAINST CITIES RESULTING IN CORRECTIVE ACTION

### Florence City Council

Complaint: An individual filed a complaint with this office alleging that the city council violated the KOMA by discussing an improper topic in executive session; extended an executive session without a motion and a vote; and failed to take a public vote to terminate the city clerk.

Resolution: Upon review, this office determined that during an executive session for nonelected personnel, the city council incidentally mentioned the need for camera coverage in a work area when discussing an allegation of employee theft. The city council had discussed “camera coverage” during an earlier work session after the theft of city property valued at \$7,000. The council did not discuss the merits of security cameras during the executive session. Following the executive session, a council member made a motion to purchase cameras; the council member based her motion on concerns discussed during the earlier work session, as well as the new information about a possible employee theft received during the executive session. Based on the facts, the council’s mention of cameras was brief and incidental to the primary purpose of the executive session—a discussion of suspected employee theft. The executive session did not violate the KOMA. Concerning the clerk, investigation revealed the mayor has general supervision over the affairs of the city. The mayor spoke to the clerk to gauge her interest in resigning as an alternative to other possible job action by the mayor and city council. He did not take any other action. The clerk decided to resign; the city council held a special meeting the next day to accept the clerk’s resignation. Because the council held a public vote to accept the resignation, it did not violate the KOMA. Finally, investigation revealed that on occasion the city council would recess into executive session. Sometimes the council found it needed additional time to discuss a particular matter. When this happened, the council would return to its meeting room, make another motion and then leave the meeting room again. This led to frustration on the part of members of the public in attendance. In an attempt to reduce this frustration and encourage continued community participation, the mayor, after consulting with the Kansas League of Municipalities, began to tell members of the public in attendance that the executive session would continue for a specified number of minutes. The mayor believed he was acting in good faith based on the guidance he believed he received. The city council essentially conceded that it failed to make a

motion or vote to approve at least two of these “extensions” as required by the KOMA, which requires each executive session to comply with the statutory requirements. This office concluded that the council violated the KOMA, but that the failure to comply with the statutory requirements was a technical violation because the council substantially complied with the KOMA. It made motions for executive session and did not change the justification or place the open meeting would resume. It recorded the time needed for the additional discussion, and did not move to a different location to hold the executive session or discuss any other matters. The public was aware of the need for the executive session and investigation did not establish any evidence of prejudice resulting from these actions, that the public’s right to know was effectively denied, or that by using this process, the council intended to circumvent or thwart the purposes of the KOMA. This office requested the council take remedial action to ensure its motions for executive session complied with the KOMA, including establishing and using a checklist or other similar protocol to ensure it met all the statutory requirements, and attending at least one hour of KOMA training. The council promptly complied with this request, and this office determined no formal enforcement action was necessary.

### **Fort Scott City Commission**

Complaint: The city attorney submitted an email to this office self-reporting that the commission violated the KOMA when the clerk failed to send a meeting notice for a work session to all those requesting notice.

Resolution: Upon review, this office determined the commission relied on the clerk to provide the notice required by K.S.A. 75-4318(b). On the occasion reported, the city clerk failed to send meeting notice to all the required parties. When she discovered this, the clerk sent an email to all individuals and entities on the notification list to apologize and explain what happened. The clerk also advised that the commission did not take any votes and that the public could view a recording of the meeting on the city’s YouTube channel. Additionally the clerk explained that she had notified the press of the work session and published notice in the newspaper, as well as on the city’s Facebook page. This office did not receive any complaints from individuals who did not receive notice of the work session. The commission’s failure to provide notice violated the KOMA. Based on the facts reported, there was no evidence the commission’s failure to provide notice was intentional or a subterfuge to defeat the purposes of the KOMA. The city made good faith efforts to ensure the public was aware of the work session. This office requested that the commission take remedial action to adopt a checklist or other written protocol to ensure that it properly identified and tracked requests for meeting notice, and that the clerk provided meeting notice a reasonable time in advance of the particular meeting. The clerk had already begun to take some of these steps at the time of the self-report. The commission promptly complied with this request, and this office determined no formal enforcement action was necessary.

**COMPLAINTS AGAINST COUNTIES  
RESULTING IN CORRECTIVE ACTION**

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**Chautauqua County Commissioners**

Complaint: An individual filed a complaint with this office alleging that the commission violated the KOMA when it reached a decision in executive session to fire three employees and then terminated them without a public vote.

Resolution: Upon investigation, the commission freely admitted that it decided during executive session to terminate three county employees. In the case of two county employees, it argued that it had delegated authority to each commissioner to take action concerning road crews in their individual districts. In the case of a third employee, it merely tasked the human resources administrator with terminating the employee, but did not hold a public vote to delegate its authority to the administrator. The commission indicated that these “consensus” decisions in executive session were based on the its “decades long practice” of delegating as it sees a need; because it was a longstanding “practice,” the commission could not identify when it had voted to make the delegations or if the delegations were renewed when new commissioners were elected. The KOMA permits a public body to delegate its authority to one or more of its members as long as the public body makes the delegation in conformity with the KOMA. This includes taking binding action in an open meeting to make the delegation. Because the commission failed to take binding action in an open meeting, it violated the KOMA, even though it acted in a good faith, although mistaken belief based on its “decades long practices.” This office determined that remedial action consisting of KOMA training was a reasonable resolution of the individual’s complaint. The commission promptly complied with the requested remedial action, and this office determined no further enforcement action was necessary.

**Labette County Commissioners Cole Proehl and Brian Kinzie**

Complaint: Three individuals filed nearly identical but separate complaints with this office alleging that Commissioners Cole Proehl and Brian Kinzie violated the KOMA by engaging in serial communications. The individual filing the third complaint also alleged the commissioners violated the KOMA by failing to provide her with notice of their phone call meeting.

Resolution: Upon investigation, it was determined that Commissioners Proehl and Kinzie spoke on the phone. Their recollection of this phone call differs. Commissioner Proehl stated he asked Commissioner Kinzie to call him so that he could express frustration with the behavior of certain individuals at commission meetings, and to apologize for losing his temper and leaving a meeting abruptly. Commissioner Kinzie recalls that they discussed commissioner conduct, events at prior meetings, and setbacks. However, each commissioner denied discussing a resolution that Commissioner Proehl drafted and presented at a later meeting or its specific contents related to setbacks and windfarms, and the matters they discussed did not require binding action. Commissioner Lonie Addis did not participate in this phone call. Based on these facts,



this office determined that the phone call was not a serial communication. Although a majority of the commission engaged in an interactive exchange about the business or affairs of the body, neither commissioner intended to reach an agreement on a matter that would require binding action by the commission. Although the elements of a serial communication were not present, this office determined that the phone call constituted a KOMA meeting because a majority of the commission engaged in an interactive exchange about the business or affairs of the body. Individuals requesting notice of the commission's meetings, like the third complainant, did not receive notice of this phone call meeting. After due consideration of the facts, including that the first and second individuals did not raise the issue of notice in their complaints and had not requested notice of meetings, this office determined that formal enforcement action was not warranted. However, because compliance with the KOMA's meeting and notice requirements is important, this office notified the commission that remedial action involving training was required to resolve this matter. The commission promptly complied with the request for remedial action.

**Lincoln County Commissioners Alexis Pflugh and Randy Lohmann**

Complaint: An individual filed a complaint alleging that Commissioners Alexis Pflugh and Randy Lohmann violated the KOMA when they engaged in a discussion of county business while making Facebook posts on the Lincoln County Concerned Citizens Facebook page on two occasions in February and March of 2020.

Resolution: Upon investigation, it was determined that in February 2020, Commissioner Lohmann made several posts on the Lincoln County Concerned Citizens Facebook page to express his disappointment that the commission made appointments to the Lincoln County Hospital Board during his planned absence from a commission meeting. In response, Commissioner Pflugh made 15 posts explaining her vote and responding to comments from other members of the Facebook group. Thereafter, she and Commissioner Lohmann, who constituted a majority of the commission, engaged in an interactive exchange or discussion about the events of the commission meeting, including why those commissioners who were present at the meeting did not wait until Commissioner Lohmann was present to make the appointments. The commissioners admitted they held this discussion, but argued that the discussion was not a meeting because the board had already voted on the matter and they were only discussing past action. The commission misconstrued the KOMA. It is not necessary for a public body to take any action or votes for a meeting to occur; discussion of the business or affairs of the public body is sufficient to meet the third element of a meeting. Additionally, in this instance, at least two individuals had requested notice of the commission's meetings and the commission did not provide notice of the Facebook exchanges/meeting on this occasion. The exchanges on this occasion did not constitute serial communications because there was no intent to reach an agreement of a matter that would require binding action to be taken by the public body. With regard to the Facebook exchanges that took place in March 2020, after investigation, this office determined that they were of a more generalized nature and related to personal opinions about the governor's recently issued stay home executive order and its impact on personal rights. At the time of these Facebook exchanges, the commission was not

## Kansas Open Meetings Act Complaints, continued

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required to consider or take action on the stay home order issued by the governor. Although these were interactive exchanges by a majority of the commission, because they were of a more generalized nature, they did not constitute the business or affairs of the commission and thus did not meet all the elements of a meeting. Likewise, these exchanges did not meet all the elements of a serial communication because there was no evidence that any or all of the participants intended to use the Facebook exchanges to reach an agreement on a matter that would require binding action by the commission. Then-Commissioner Gabelmann did not participate in any of the Facebook exchanges. After due consideration of the facts, including a prior technical violation of the KOMA for failure to observe the statutory requirements for recessing into executive session, this office sought voluntary compliance with the KOMA through a Consent Order that required each commissioner to individually pay a civil penalty of \$50.00 and comply with the KOMA. The Consent Order waived the civil penalty if each commissioner received KOMA training. Commissioners Lohmann and Pflugh promptly complied with the requirements of the Consent Order by obtaining training. Then-Commissioner Gabelmann was not required to sign the Consent Order because he did not participate in any of the Facebook exchanges.

### **Lyon County Commission**

Complaint: An individual filed a complaint with this office alleging that the commission violated the KOMA when on four occasions it failed to comply with the statutory requirements for recessing into executive session.

Resolution: Upon investigation, this office determined that two of the four executive sessions generally complied with the statutory requirements, but did not state the location where the open meeting would resume. One of the executive session motions included the justification and the time the open meeting would resume, but did not include the subject to be discussed and the location where the open meeting would resume. Additionally, after the time for this executive session expired, the commission decided it needed more time to complete its discussion. The clerk recorded this in the meeting minutes as “[M]eeting reconvened at 10:40 a.m. with a request for an extension, to return at 10:55 a.m. . . .” It was not clear whether the commission voted to approve this “extension.” Because its motions did not meet all the statutory requirements for recessing into executive session, including recording the complete motion in its meeting minutes, the commission violated the KOMA. After considering all the facts, this office determined that this was a technical violation of the KOMA. Here, the public was aware the commission was recessing into, as well as the reason for, the executive sessions, it recorded the time needed for additional discussion, and there was no evidence that the failure to meet the required elements was an effort to circumvent or thwart the KOMA. The individual filing the complaint did not allege any specific prejudice or that the public’s right to know was effectively denied. This office determined that remedial action was necessary to resolve this technical violation. This remedial action involved requiring the commission to establish and use a checklist or other similar protocol to ensure it meets the statutory requirements for recessing into executive session. The commission promptly complied with this request for remedial action. This office determined no further enforcement action was necessary.

## COMPLAINTS AGAINST OTHER AGENCIES RESULTING IN CORRECTIVE ACTION

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### USD 480 Board of Education (Liberal)

Complaint: A member of the media filed a complaint with this office alleging that the board violated the KOMA when it held a special meeting but failed to provide him notice of the meeting as requested before it began.

Resolution: Upon investigation, this office determined that the board violated the KOMA when it did not send notice of its special meeting until after the meeting began. The board's violation was the result of the clerk's mistaken belief that he had to send the meeting agenda along with the notice. In this case, the board did not finalize its agenda until shortly before its meeting. This office determined that the board made a good faith effort to comply with the KOMA, but failed to meet its obligation to send the notice a reasonable time in advance of the meeting. The clerk's mistake was not the result of a concerted effort by the board or its staff to avoid or evade the requirements of the KOMA, and documents obtained during the investigation show the board consistently provided advance notice of its meetings by email, as well as a copy of the proposed agenda. The board's counsel instructed the clerk on KOMA compliance. In order to resolve this matter, this office asked the board to ratify all of its binding actions taken at its special meeting, and the board readily agreed to do so. This office confirmed the board provided notice of the special meeting to all who requested notice, and ratified all its previous actions. Because the board readily admitted and corrected its mistake, and took the requested remedial action, this office declined to pursue any further formal enforcement action to resolve this violation.

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## REFERRALS TO COUNTY OR DISTRICT ATTORNEY OFFICES

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- **Blue Valley Board of Education** (Johnson County) – improper delegation; failure to provide public notice of meeting.
- **Gardner City Council** (Johnson County) – failure to comply with the statutory requirements for recessing into executive session.
- **Gardner City Council** (Johnson County) – improperly included third party in executive session.
- **Lyon County Commission** (Lyon County) – failure to publicly post agendas, meeting materials, and minutes.
- **Herington Hospital Board** (Dickinson County) – executive sessions.
- **USD 448 Board of Education (Inman)** (McPherson County) – failure to publicly post updated meeting minutes and agendas (anonymous complainant).

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

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- **Coffey County Housing Authority** (Coffey County) – failure to respond to email request to move meeting to allow for social distancing.
- **Ronda Gilbert, Executive Director of the Coffey County Housing Authority** (Coffey County) – failure to respond to emails regarding meeting location.
- **Blue Valley Board of Education** (Johnson County) – public denied access to meeting if not wearing mask (two separate complaints).

**COMPLAINTS RESULTING IN A FINDING OF NO VIOLATION**

<b>Public Body or Agency</b>	<b>Alleged Violation(s)</b>	<b>Resolution</b>
Dwight City Council	KOMA – unknown	The complainant did not respond to a request for information, clarification and supporting documents.
Riley County Commission	KOMA – discussed and voted on an item not on the agenda	<p>The commission did not violate the KOMA.</p> <p>The KOMA does not require that a public body create a meeting agenda. If a body chooses to create an agenda, it must include topics planned for discussion if known at the time the agenda is prepared. A public body may amend an agenda at any time during the meeting unless there is a statute or rule prohibiting amendment. If an agenda exists, the public body must make it available to any person requesting it prior to the meeting. The KOMA does not set forth any rules concerning the order of a public meeting or the reconsideration of matters that the public body discussed at an earlier time during the open meeting or during a previous meeting. The public body has the discretion to determine the order and agenda of a meeting.</p>
Mayor Bruce Wiehl, Smith Center	KOMA – mayor does not permit the public to speak or comment during meeting; content of meeting minutes	<p>The mayor did not violate the KOMA.</p> <p>The KOMA does not require that a public body accept public comments during its meeting. It also does not require the public body to permit those in attendance to interject their comments when discussing agenda items. While a public body may adopt local practices that permit the public to comment, the KOMA does not provide this office with jurisdiction to enforce any such local policies.</p> <p>The KOMA does not require a public body to maintain meeting minutes. It also does not establish content requirements for meeting minutes that a public body decides to keep. The only exception to this rule relates to motions for executive sessions. As long as a public body complies with the rules relating to recording motions for executive sessions, the mere fact that the minutes are a summary or do not contain details of all discussions does not violate the KOMA.</p>

## Kansas Open Meetings Act Complaints, continued

Public Body or Agency	Alleged Violation(s)	Resolution
Lincoln County Commission	KOMA – failure to self-report a KOMA violation	The complainant did not respond to a request for clarification and supporting documents.
Smith Center City Council and Mayor Wiehl	KOMA – not permitted to speak during meeting but others are; mayor has building opposite city hall zone for business, calls it a “man cave” and uses it for overnight parties; traffic records are sealed and failure to pay taxes records are not	<p>The complaint did not state any allegations involving the Smith Center City Council.</p> <p>The mayor did not violate the KOMA.</p> <p>Previously resolved identical concerns regarding public comment; declined to re-review this portion of the complaint.</p> <p>Allegations regarding the mayor selling house and using a building he owns as a “man cave,” zoning concerns, and records do not state a violation of the KOMA.</p>
Frankfort City Council	KOMA – Facebook livestream recording deleted; attorneys argued about need for executive session; council member has conflict because she has a contract with a wind farm and is still voting on issues	<p>The complainant did not respond to a request for clarification and supporting documents.</p> <p>The KOMA does not contain any requirements concerning the retention of meeting recordings or Facebook Live broadcasts.</p> <p>The KOMA does not govern conflict of interest matters.</p>

**Kansas Open Meetings Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violation(s)</b>	<b>Resolution</b>
Shawnee City Council	KOMA – staff only presented a summary of public comments during a public hearing	<p>The city council did not violate the KOMA.</p> <p>A public hearing is not the same as a public meeting under the KOMA. A public body subject to the KOMA may hold a public hearing. The KOMA does not address how to conduct a public hearing, and provides no authority to the Attorney General or a county/district attorney to investigate or resolve concerns arising from a public hearing. Any legal concerns arising from a public hearing are generally resolved in a manner described in the statute authorizing the public hearing or by an appeal to district court. Whether a public body complied with any statutory or other rules for conducting a public hearing is outside the scope of the KOMA.</p>
Geary County Commission	KOMA – met with Geary County Republican Chairman to formulate questions for a candidate forum	The complainant did not respond to a request for clarification and supporting documents.

**Kansas Open Meetings Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violation(s)</b>	<b>Resolution</b>
Hoisington School District USD 431	KOMA – failure to provide public notice; waiver of notice pursuant to K.S.A. 72-8205 (now 72-1138); failure to provide notice	<p>The school board did not violate the KOMA.</p> <p>The KOMA requires a public body to provide notice of the date, time and place of a meeting to any person requesting such notice. The KOMA does not require that a public body give notice to the general public by publishing notice in a newspaper notices, airing radio ads, or by posting notices on the internet. The notice requirement is satisfied if the public body provides notice of the meeting to the individual requesting notice.</p> <p>The waiver of notice provisions set out in K.S.A. 72-1138 apply solely to school boards and permit a board member to waive the required written notice stating the time and place of any special meeting and the purpose for which the meeting is called; this notice must be provided at least two days in advance of the meeting unless waived. This waiver provision does not alter any KOMA obligation to provide meeting notices under K.S.A. 75-4318(b).</p> <p>The complainant did not respond to a request for clarification and supporting documents related to the remaining concerns.</p>



**Kansas Open Meetings Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violation(s)</b>	<b>Resolution</b>
Olmitz City Council	KOMA – serial communications; violation of various ordinances	<p>The city council did not violate the KOMA.</p> <p>Typically, the meetings of a public body occur in person. However, a meeting may also occur by means of a serial communication. This type of communication is subject to the KOMA’s requirement of openness. K.S.A. 75-4318(f) provides that “. . . interactive communications in a series shall be 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.” All four elements must be present for there to be a serial communication. Whether a series of communications is a violation of the KOMA is very fact-specific, and each situation must be decided on its own facts.</p> <p>Decisions on mere procedural matters are not the type of business that a public body must discuss in an open meeting. As long as the members of a public body do not debate or take part in an interactive exchange of ideas about the business or affairs of the body, determining whether and where to meet, what agenda items should be discussed, or sharing correspondence or draft meeting minutes do not constitute a meeting subject to the KOMA.</p> <p>Mere disagreements with a city council’s actions do not state a violation of the KOMA.</p>

## Kansas Open Meetings Act Complaints, continued

Public Body or Agency	Alleged Violation(s)	Resolution
Lawrence City Commission (self-report)	KOMA – serial communications	<p>The commission did not violate the KOMA.</p> <p>Typically, the meetings of a public body occur in person. However, a meeting may also occur by means of a serial communication. This type of communication is subject to the KOMA’s requirement of openness. K.S.A. 75-4318(f) provides that “. . . interactive communications in a series shall be 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.” All four elements must be present for there to be a serial communication. Whether a series of communications is a violation of the KOMA is very fact-specific, and each situation must be decided on its own facts. The email exchanges here did not meet all the elements of a serial communication.</p> <p>An exchange of information with a staff member for the public body is not a mutual or reciprocal exchange of information within the meaning of the KOMA.</p>
USD 234 Board of Education (Fort Scott)	KOMA – board did not hold public vote to approve real estate contract until after superintendent signed contract, thus entering contract before a public vote	<p>The board did not violate the KOMA.</p> <p>Under the KOMA, a public body must vote on a matter requiring binding action in an open meeting. By law, superintendent not authorized to approve contracts if value is more than \$20,000.00. The board voted in open meeting to approve real estate contract.</p>

**Kansas Open Meetings Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violation(s)</b>	<b>Resolution</b>
Fort Scott City Commission	KOMA – serial communications	<p>The commission did not violate the KOMA.</p> <p>Under the KOMA, discussion of any matters involving the business or affairs of a public body must take place in an open meeting, and the public body must take any votes on matters requiring binding action in an open meeting. A public body can only act and take binding action on matters where Kansas law grants it the legal authority to do so. Such authority must come from the Kansas Constitution, a specific Kansas statute, or a Charter Home Rule Ordinance. Neither the Kansas Constitution nor state law grant a public body the authority to challenge a candidacy or election. The City of Fort Scott does not have a Charter Home Rule Ordinance granting it such authority. However, Kansas law does provide that “any registered voter may contest the election of any person for whom such voter had the right to vote. . . .” Essentially, only individual registered voters are authorized to contest a candidacy. The commission is not a registered voter within the meaning of K.S.A. 25-1435, and it had no authority to contest a particular candidate’s election. However, the mayor and the commissioners who signed the joint letter were registered voters, and thus could sign a letter contesting a candidacy without violating the KOMA.</p>

**Kansas Open Meetings Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violation(s)</b>	<b>Resolution</b>
Fort Scott City Commission	KOMA – improperly discussed an elected official in an executive session using the nonelected personnel justification	<p>The commission did not violate the KOMA.</p> <p>A public body may hold executive sessions to discuss certain topics. One such justification is to discuss personnel matters of nonelected personnel; another is the need for consultation with an attorney for the public body that would be privileged in the attorney-client relationship. The commission discussed facts discovered during an investigation related to a nonelected city employee and received legal advice from its attorney. The discussion was complicated by the fact that a sitting city commissioner was implicated in the investigation, which required the commissioner to be identified and his actions described. The matters the commission discussed were so intertwined that the commission could not discuss them during open meeting without violating the privacy of the employee. However, commission did not discuss what to do about the implicated commissioner; it discussed this during an open meeting.</p> <p>Kansas courts have recognized that “when a public body faces discussions of topics, some of which are exempt and some of which may not be exempt under [the KOMA], if segregation of the materials into open and closed sessions would make a coherent discussion pragmatically impossible, it is reasonable to close the entire meeting.”</p>

**Kansas Open Meetings Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violation(s)</b>	<b>Resolution</b>
Riley County Law Board	KOMA – serial communications	<p>The board did not violate the KOMA.</p> <p>Typically, the meetings of a public body occur in person. However, a meeting may also occur by means of a serial communication. This type of communication is subject to the KOMA’s requirement of openness. K.S.A. 75-4318(f) provides that “. . . interactive communications in a series shall be 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.” All four elements must be present for there to be a serial communication. Whether a series of communications is a violation of the KOMA is very fact-specific, and each situation must be decided on its own facts. The verbal exchanges here did not meet all the elements of a serial communication.</p>

**Kansas Open Meetings Act Complaints, continued**

<p>Butler County Community College Board of Trustees</p>	<p>KOMA – binding action in executive session; improper use of executive session</p>	<p>The board did not violate the KOMA.</p> <p>A public body may hold executive sessions to discuss certain topics, including personnel matters of nonelected personnel. The board discussed specific facts about the jobs and salaries of 24 employees, as well as the program costs and budget shortfalls that led the college administration to conclude it should terminate all 24 employees. Ordinarily, budget information is the type of information that a public body would discuss in an open meeting. However, the board could not reasonably discuss essential financial information about the program, including individual salaries, during an open meeting without revealing that the college administration was proposing to terminate all 24 employees. The decision to terminate 24 employees required financial explanation. The financial information was essential to understanding why administration decided to terminate the 24 employees. The matters it discussed were so intertwined that the board could not discuss during open meeting without violating the privacy of the employees. Kansas courts have recognized that “when a public body faces discussions of topics, some of which are exempt and some of which may not be exempt under [the KOMA], if segregation of the materials into open and closed sessions would make a coherent discussion pragmatically impossible, it is reasonable to close the entire meeting.”</p> <p>The purpose of the KOMA is to ensure that a public body holds its meetings, discusses its business, and takes binding action in the open. The purpose of the KOMA is defeated if public bodies take binding action while in executive session. A public body may reach a “consensus” or general agreement on a matter requiring binding action during an executive session. However, “[N]o binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.” There is no exception to this requirement. A consensus reached during an executive session may constitute binding action in violation of the KOMA if a public body fails to return to its open meeting to take a formal public vote on a decision that would normally require a vote by the public body. Here, the board may have reached a consensus, but a public vote was not required because the board had already delegated the authority to make the required decisions to the college administration.</p>
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**Kansas Open Meetings Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violation(s)</b>	<b>Resolution</b>
Rawlins County Extension Executive Council Board of Directors	KOMA – executive session for nonelected personnel used to discuss volunteers	<p>The board did not violate the KOMA.</p> <p>Under the Kansas Tort Claims Act, a volunteer is an employee for purposes of the Act. A public body such as the extension council board may discuss the individual actions and conduct of a volunteer in executive session using the justification for nonelected personnel.</p>
Johnson County Commission	KOMA – serial communications	The complainant did not respond to a request to complete a complaint form as required by K.S.A. 75-4320e(a).
Bourbon County Commission	KOMA – commission chairman spoke to sheriff outside of an open meeting	<p>The commission did not violate the KOMA.</p> <p>Individuals who are not members of a public body are not subject to the KOMA. A member of a public body may speak to the sheriff outside of an open meeting about a citizen’s concern. The KOMA does not require an elected member of a public body to conduct every conversation he or she has in an open meeting, even if the conversation is with other elected officials, county employees or constituents. The KOMA also does not require the clerk to record such conversations in the meeting minutes, or that they be captured by a video archiving system. It is only when members of a public body hold a public meeting as defined by the KOMA that its requirements of openness apply.</p>
Lincoln County Commission	KOMA – two commissioners appeared together at a hospital board meeting	The complainant did not respond to a request for clarification and supporting documents.

## Kansas Open Meetings Act Complaints, continued

Public Body or Agency	Alleged Violation(s)	Resolution
Neosho County Commissioner David Orr	KOMA – commissioner mentioned complainant’s name in an open meeting	<p>The commissioner did not violate the KOMA.</p> <p>The KOMA requires a public body to discuss its business in an open meeting. A public body may, but is not required to, recess into executive session to discuss certain matters. One of the justifications for holding an executive session is the need to discuss personnel matters of nonelected personnel. While the KOMA allows a public body to discuss such matters during an executive session, it is up to the public body to decide the best way to discuss personnel matters. Declining to hold an executive session is not a violation of the KOMA. It is also not a violation of the KOMA for a public body to discuss specific county employees or others, including the county offices where they work, during an open meeting.</p>
Meade Hospital Board	KOMA – unknown	The complainant did not respond to a request for clarification and supporting documents.
Meade Hospital Board	KOMA – unknown	The complainant did not respond to a request for clarification and supporting documents.
Atwood City Council	KOMA – form and content of minutes; failure to record executive sessions in the minutes; failure to provide public notice	<p>The city council did not violate the KOMA.</p> <p>The KOMA does not govern how a public body conducts its meetings or the content of its meeting minutes. The KOMA does establish requirements concerning the form of the motion used to recess into an executive session, as well as requiring the public body to record the complete motion in its permanent meeting minutes. Other than what is required to meet the statutory requirements for an executive session, a public body is free to determine what information to record in its meeting minutes.</p> <p>The KOMA does not require that a public body provide public notice of its meetings. It also does not require a public body to notify its employees of workshops or other meetings.</p>



**Kansas Open Meetings Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violation(s)</b>	<b>Resolution</b>
Lyon County Planning and Zoning Board	KOMA – unable to attend meeting due to quarantine	<p>The board did not violate the KOMA.</p> <p>A public body is free to decide when to hold its meetings and any public hearings on matters it must consider. Public bodies do their best to hold meetings at times and places that are convenient to most of the public. However, even at the best of times, not all members of the public will be able to attend a particular meeting. Here, the board used a larger meeting venue and accepted public comments on draft zoning regulations “at any time.” This allowed public participation and comment, while at the same time permitted the regulation review process to proceed.</p>
Lyon County Planning and Zoning Board	KOMA – held meeting to adopt regulations despite mass gathering limits	<p>The board did not violate the KOMA.</p> <p>A public body is free to decide when to hold its meetings and any public hearings on matters it must consider. Public bodies do their best to hold meetings at times and places that are convenient to most of the public. However, even at the best of times, not all members of the public will be able to attend a particular meeting. Here, the board used a larger meeting venue and accepted public comments on draft zoning regulations “at any time.” This allowed public participation and comment, while at the same time permitted the regulation review process to proceed.</p>
Spivey City Council	KOMA – failure to hold an executive session	The complainant did not respond to a request for clarification.

## Kansas Open Meetings Act Complaints, continued

Public Body or Agency	Alleged Violation(s)	Resolution
Lyon County Commission; Lyon County Planning and Zoning Board	KOMA – adopted mask mandates to discourage public attendance at public hearings on draft zoning regulations; failure to provide public notice of meeting; live video stream of meeting not offered	<p>The commission did not violate the KOMA.</p> <p>The complaint did not describe any actions taken by the commission that implicated the KOMA.</p> <p>A public body is free to decide when to hold its meetings and any public hearings on matters it must consider. Public bodies do their best to hold meetings at times and places that are convenient to most of the public. However, even at the best of times, not all members of the public will be able to attend a particular meeting. Here, the board used a larger meeting venue and accepted public comments on draft zoning regulations “at any time.” This allowed public participation and comment, while at the same time permitted the regulation review process to proceed.</p> <p>Under the KOMA, a public body must give meeting notice to any individual requesting notice. However, it does not require a public body to publish notice of its meetings in a newspaper, on the radio or by other similar means. Even though public notice was not required, the board took steps to post notices on the Lyon County website, as well as the planning and zoning Facebook page. Additionally, local news outlets reported on the progress of the draft regulations, noted when the board and commission would be meeting, and the board’s decisions.</p> <p>The KOMA does not require a public body to live stream its meetings or record them for later broadcast. The requirements of K.A.R. 16-20-1 concerning compliance with the KOMA during an emergency declaration did not apply because the board held its meetings in person in a physical location.</p>

**Kansas Open Meetings Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violation(s)</b>	<b>Resolution</b>
Governor Kelly and eight (8) Legislative Leaders	KOMA – failure to hold a public meeting	<p>The governor and legislative leaders did not violate the KOMA.</p> <p>A “meeting” subject to the KOMA occurs when three elements are present: 1) a gathering or assembly in person or through the use of a telephone or any other medium for interactive communication; 2) by a majority of the membership of a public body or agency; and 3) for the purpose of discussing the business or affairs of the public body or agency. The KOMA does not apply if all three elements are not present. Here, the subject of the meeting was possible statewide mask legislation. This subject does not fall under the purview of either the State Finance Council or the Legislative Coordinating Council, and thus the third element of a meeting was not present.</p>
Board of Zoning Appeals of Kansas City, Kansas	KOMA – failure to provide meeting notice	<p>The board did not violate the KOMA.</p> <p>Under the KOMA, a public body must give notice to any individual requesting notice. However, it does not require a public body to publish notice of its meetings in a newspaper, on the radio or by other similar means. An alleged failure to provide notice required under zoning statutes and the zoning appeals hearing process does not violate the KOMA.</p>

**Kansas Open Meetings Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violation(s)</b>	<b>Resolution</b>
Lyon County Commission; Lyon County Planning and Zoning Board	KOMA – holding meetings to adopt zoning regulations during a pandemic	<p>The commission and the board did not violate the KOMA.</p> <p>A public body is free to decide when to hold its meetings and any public hearings on matters it must consider. Public bodies do their best to hold meetings at times and places that are convenient to most of the public. However, even at the best of times, not all members of the public will be able to attend a particular meeting. Here, the board used a larger meeting venue and accepted public comments on draft zoning regulations “at any time.” This allowed public participation and comment, while at the same time permitted the regulation review process to proceed.</p> <p>At the time of the complaint, the commission had not yet considered the draft zoning regulations in question. The commission was holding its regular meetings in the commission chamber and live streaming its meetings. This allowed the public to view the meetings without being physically present.</p>

**Kansas Open Meetings Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violation(s)</b>	<b>Resolution</b>
<p>Cherokee County Commissioners Myra Carlisle Frazier and Neal Anderson</p>	<p>KOMA – failed to opt out of mask order; changed order of agenda; would not let all of public speak</p>	<p>The commissioners did not violate the KOMA.</p> <p>Under the KOMA, any binding action taken at a meeting that is not in substantial compliance with the KOMA shall be voidable in an action brought by the attorney general or a county or district attorney. Here, the commission did not take any binding action. Instead, the provisions of the Executive Order became effective because the commission did not take any binding action.</p> <p>A public body must hold discussions of the substantive business or affairs of the body in an open meeting. Where to hold a meeting to make it accessible to the public—especially during a pandemic—is more akin to a purely ministerial decision. This is because under the KOMA, a meeting must be open and accessible to the public. There is little, if any, discretion to exercise about ensuring a meeting is open to the public precisely because the meeting must be open to the public. Under the facts provided for review, deciding where to hold the meeting so that it would be accessible to the public is not the type of substantive business that a public body must discuss in an open meeting. Here, the commission moved the meeting to a large courtroom space that allowed the public to be present.</p> <p>A commissioner believed that if the commission held its meeting in the courtroom, Supreme Court Order 2020-PR-090 would apply, thus requiring the use of a mask. However, this order only applied to spaces used by the court for a proceeding. A commission meeting is not a court proceeding and thus such meetings were outside the scope of this order. Although the commissioner attempted to persuade the sheriff and judge to enforce the supreme court order, that did not happen. The courtroom remained open to the public. Moreover, the doors to the courtroom remained open, thus allowing people in the hallway to hear the proceedings.</p>
<p>USD 206 Board of Education (Remington-Whitewater)</p>	<p>KOMA – unknown</p>	<p>The complainant voluntarily withdrew her complaint.</p>

## Kansas Open Meetings Act Complaints, continued

Public Body or Agency	Alleged Violation(s)	Resolution
Lincoln County Commission	KOMA – binding action in executive session (changed employee’s work schedule)	<p>The commission did not violate the KOMA.</p> <p>Under the KOMA, a public body must take binding action in an open meeting, and not in an executive session or by secret ballot. The purpose of this provision is to make public every official’s vote on the public’s business. “Binding action” is the equivalent of “final action.” In other states, the phrase “final action” is often used and has been broadly construed to connote finality within the scope of the powers delegated to the bodies subject to those statutes.</p> <p>Based on the totality of the facts, the commission discussed performance expectations, including availability on Friday afternoons. However, it did not change the terms or conditions of the employee’s job—the duties, wages and hours remained the same. Permitting the employee to take home a county issued cell phone and forwarding the office number to this phone, did not alter job requirements but simply emphasized a longstanding expectation that the employee remain available for work.</p>

**Kansas Open Meetings Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violation(s)</b>	<b>Resolution</b>
<p>The University of Kansas / Pandemic Medical Advisory Team (PMAT)</p>	<p>KOMA – failure to provide meeting notice</p>	<p>The university / PMAT did not violate the KOMA.</p> <p>The KOMA applies to all legislative and administrative bodies, and agencies of the state, and political and taxing subdivisions thereof that receive, expend and are supported in whole or in part by public funds. This includes boards, commissions, councils, committees, subcommittees and other subordinate groups. The KOMA “has been applied only to groups of persons who exercise authority as a ‘body’ or ‘agency’ and not to subordinate staff or personnel who gather together but do not take collective action.” It is the actual functions to be performed by the group, and not the composition of the group, that determines whether any meetings must be open to the public.</p> <p>After review, it was determined that the PMAT is not a subordinate group subject to the KOMA’s requirements, but is more akin to a staff meeting during which the Chancellor seeks input from university employees and others. The PMAT is not formally constituted, and has no formal charter, by-laws, rules of order, regulations or policies that it is required to follow. While it met regularly, that was not surprising given the nature of the pandemic. The PMAT is not required to maintain meeting minutes, and has no officers. The employees and others participating in the PMAT have no term of office, specific duties or powers, or decision-making responsibilities on behalf of the university related to the conduct of the affairs and/or the transaction of university business. The PMAT does not participate in the formal university decision-making process by gathering information, evaluating options, and making recommendations to the Faculty Senate, University Senate, or others. For the most part, the PMAT is a group of university employees working together to provide information and analysis to the Chancellor about some extraordinary circumstances arising from a pandemic. The Chancellor makes decisions and takes binding action.</p>

**Kansas Open Meetings Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violation(s)</b>	<b>Resolution</b>
<p>City of Fort Scott; Former City Manager Dave Martin; City Attorney Jeff Deane; Commissioner Lindsey Watts and Commissioner Randy Nichols</p>	<p>KOMA – possible official misconduct; misuse of public funds; improper process to consider hiring permanent and interim city manager</p>	<p>The entities and individuals did not violate the KOMA.</p> <p>The KOMA ensures that a public body holds its meetings, discusses its business, and takes binding action in the open after providing notice of its meetings to those who have requested notice. It also establishes rules that permit a public body to discuss certain matters in a closed or executive session. However, it does not govern or provide enforcement authority over possible official misconduct or misuse of public funds.</p> <p>The ultimate authority in a city is vested in its duly constituted governing body when it is meeting and in open session. A governing body does not legally exist except in an official meeting. When not in session, the individual members of a city council have no more legal authority than do private citizens. While a city council may vote to delegate authority to an individual council member(s), the council member(s) cannot act unilaterally on city business and bind the city without such a delegation. However, an individual city council member may still act on his or her own to gather information or consult with city staff, then present such information or research to the city council for consideration. The city council must still take binding action in an open meeting, which it did here.</p>
<p>South Haven City Council</p>	<p>KOMA – discussed work performance in an open meeting</p>	<p>The city council did not violate the KOMA.</p> <p>A public body may, but is not required to, hold an executive session to discuss certain matters. This includes discussions involving personnel matters of nonelected personnel. The decision to hold an executive session is discretionary, and rests with the members of a governing body like the city council. Discussing possibly confidential matters outside of an executive session may raise concerns about violation of personnel policies or other rights, but is not a violation of the KOMA.</p>



**Kansas Open Meetings Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violation(s)</b>	<b>Resolution</b>
Hiawatha City Commission	KOMA – commission silenced political speech; removed from meeting	<p>The commission did not violate the KOMA.</p> <p>The KOMA does not require that a public body allow the public to speak or to have any item placed on the agenda of an open meeting. The public “right” is to attend and listen to the meeting. Thus, any action taken by the commission to restrict or limit public comment does not violate the KOMA. Whether the commission complied with its own rules, if any, concerning public participation or comment, is outside the scope of the KOMA.</p> <p>The KOMA does not govern enforcement of local mask orders.</p>
Leavenworth County Mental Health Task Force	KOMA – did not receive invitation to meeting	The complainant did not respond to a request for clarification and supporting documents.
Rice County Commission	KOMA – serial communications; used executive sessions to discuss elected official(s)	The complainant did not respond to a request for clarification and supporting documents.
Sam Seeley, Director, Lyon County Planning and Zoning	KOMA – lying to commission in an open meeting	<p>The director did not violate the KOMA.</p> <p>The KOMA applies to members of a public body; it also establishes rules that public bodies must follow, as well as remedies that apply in the event of a violation. The director of the planning and zoning department is not a member of the planning and zoning board. Because he is not a member of the public body, the KOMA does not govern his actions and provides no remedies that apply to him. It is up to the planning and zoning board or the county commission to determine whether any allegations concerning misconduct are true and warrant any further action.</p>

## Kansas Open Meetings Act Complaints, continued

Public Body or Agency	Alleged Violation(s)	Resolution
City of Paxico / Paxico City Council	KOMA – serial communications	<p>The city council did not violate the KOMA.</p> <p>Typically, the meetings of a public body occur in person. However, a meeting may also occur by means of a serial communication. This type of communication is subject to the KOMA’s requirement of openness. K.S.A. 75-4318(f) provides that “. . . interactive communications in a series shall be 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.” All four elements must be present for there to be a serial communication. Whether a series of communications is a violation of the KOMA is very fact-specific, and each situation must be decided on its own facts.</p>
City of Paxico / Paxico City Council	KOMA – did not provide agenda, meeting minutes and meeting packet to the public	<p>The city council did not violate the KOMA.</p> <p>The KOMA does not impose a duty on a public body to provide an agenda unless an individual requests one. The KOMA does not require that a public body provide copies of meeting minutes or bills it will consider for payment prior to a meeting. A public body may decide to provide copies of its meeting packet, including draft minutes and bills it will consider for payment, in advance of the open meeting, but it is not required to do so.</p>
McCracken City Council	KOMA – unknown	<p>The complainant did not respond to a request to complete a complaint form as required by K.S.A. 75-4320e(a), and to provide clarification and supporting documents.</p>
Lyndon Planning and Zoning Commission	KOMA – failure to maintain meeting minutes for a meeting that was not held due to lack of a majority/quorum	<p>The commission did not violate the KOMA.</p> <p>The KOMA does not require a public body to keep meeting minutes except when it recesses into executive session. It is up to the public body to determine the form and content of the meeting minutes. Approved minutes of a later meeting made clear the specific meeting did not take place due to a lack of a quorum.</p>

**Kansas Open Meetings Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violation(s)</b>	<b>Resolution</b>
Lyndon City Council / Lyndon Planning and Zoning Commission	KOMA – meeting minutes	<p>The city council and the commission did not violate the KOMA.</p> <p>The KOMA does not require a public body to keep meeting minutes except when it recesses into executive session. It is up to the public body to determine the form and content of the meeting minutes. Failure to reference a specific matter in the meeting minutes does not violate the KOMA.</p>
Lyndon Planning and Zoning Commission	KOMA – restricted public from attending public hearing on zoning appeal	<p>The commission did not violate the KOMA.</p> <p>The requirements of K.A.R. 16-20-1 concerning compliance with the KOMA during an emergency declaration did not apply because the commission held its meeting in person in a physical location.</p>
Lyndon Planning and Zoning Commission	KOMA – timing of decision on zoning appeal; failure to comply with bylaws; signatures on decision not dated	<p>The commission did not violate the KOMA.</p> <p>Whether the commission complied with any statutes, local zoning regulations or other applicable zoning requirements is outside the scope of the KOMA.</p>

## Kansas Open Meetings Act Complaints, continued

Public Body or Agency	Alleged Violation(s)	Resolution
Edgerton Mayor Donald Roberts	KOMA – met with prospective businesses; received financial incentives from a company; violation of oath; loss of trust	<p>The mayor did not violate the KOMA.</p> <p>The KOMA applies to members of a public body; it also establishes rules that public bodies must follow, as well as remedies that apply in the event of a violation. The mayor in a city of the third class is not a member of the city council for purposes of the KOMA. <i>See</i> K.S.A 15-105 (“The council of each city governed by this act shall consist of five members. . . .”). The mayor in a city of the third class, such as the City of Edgerton, presides at all city council meetings and only votes when the council is equally divided; the mayor also has general supervision over the affairs of the city. <i>See</i> K.S.A 15-301. “The intent of the Kansas statutes authorizing the mayor-council form of municipal government is that the office of mayor is separate and distinct from the members of the council. . . .” <i>See</i> Attorney General Opinion 86-110.</p> <p>Even assuming the mayor could be considered a member of the city council, he is free to meet with members of the public and businesses who are interested in the city and city business.</p>
Atchison City Council	KOMA – failure to provide notice of joint meeting	The complainant did not respond to a request for clarification and supporting documents.
Paxico City Council	KOMA – notice of meetings	<p>The city council did not violate the KOMA.</p> <p>The KOMA provides that a public body must provide notice of the date, time and place of any regular or special meeting to any person requesting such notice. A single notice can suffice for regularly scheduled meetings. However, a public body or agency must provide the requester notice of any special meetings or changes in the time, place or date of regular meetings.</p> <p>The KOMA does not apply to judicial agencies and bodies. Because it does not apply to them, a judicial agency or body does not violate the KOMA for failing to provide nonparties with notice of “city court meetings” or court hearings.</p>

**Kansas Open Meetings Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violation(s)</b>	<b>Resolution</b>
Shawnee Mission School Board	KOMA – recording of meeting removed by YouTube for misinformation then district posted revised version without public comments	<p>The board did not violate the KOMA.</p> <p>A third-party service provider is not subject to the KOMA. YouTube removed the meeting recording for violation of its community guidelines. The board reposted an edited version of the recording, with a notice that YouTube removed the previous recording. Board meeting was open to the public, and it permitted public comment even though the KOMA does not require it to do so.</p>
Mount Pleasant Township Board	KOMA – made decision outside of an open meeting to rediscuss agenda item at its next meeting	<p>The board did not violate the KOMA.</p> <p>Although a public body must hold its discussions about the business or affairs of the body and take binding action in public, decisions on essentially procedural matters are not final or binding actions within the meaning of the KOMA. As long as the members of a public body do not debate or take part in an interactive exchange of ideas about the business or affairs of the body, determining whether and where to meet, what agenda items should be discussed, or sharing correspondence or draft meeting minutes do not constitute a meeting subject to the KOMA.</p>
Lyon County Planning and Zoning Commission	KOMA – content of legal notices	<p>The commission did not violate the KOMA.</p> <p>Under the KOMA, a public body must provide notice of meetings if requested. It does not require a public body to publish notice of its meetings in a newspaper, on the radio or by other similar means. A notice of meetings under the KOMA is not the same as or a substitute for any “legal notice” required by other statutes related to zoning matters.</p>
Shawnee Mission Board of Education	KOMA – board members left meeting with faculty after public comments	<p>The board did not violate the KOMA.</p> <p>The KOMA does not require a public body to record meeting breaks in the minutes. The members of the public body cannot discuss school board business during the break.</p>

# Kansas Open Records Act Complaints

## COMPLAINTS AGAINST STATE AGENCIES RESULTING IN CORRECTIVE ACTION

### **Kansas Department for Children and Families**

Complaint: An individual filed a complaint with this office alleging that DCF violated the KORA by failing to provide her with records about her child support case.

Resolution: Upon review and consultation with the department, it advised that the individual sought records related to an open child support case. These records are generally not open under the KORA. However, because the records concerned the individual and her children, as well as her open child support case, DCF confirmed her identity and eventually provided a detailed timeline about her case. The individual was in regular contact with DCF both before and after she filed her complaint. Once DCF provided the individual with a copy of the detailed timeline, the individual was satisfied and verbally told DCF officials she “did not need anything further from DCF.” Because DCF reported it resolved the individual’s concerns with her directly, this office determined no further enforcement action was necessary to resolve this matter.

### **Kansas Department of Corrections**

Complaint: An individual filed a complaint with this office alleging that the KDOC violated the KORA by referring him to the prison library to obtain a copy of the roster of officers he was seeking.

Resolution: Upon review and consultation with the department, it agreed to provide the requested records. Because the KDOC agreed to and did promptly provide the complainant with the records he requested, this office determined no further formal enforcement action was necessary.

### **Kansas Department of Corrections, Ellsworth Correctional Facility and Larned Correctional Mental Health Facility**

Complaint: An individual filed two complaints with this office alleging that the KDOC violated the KORA by failing to provide him with copies of the General Orders he was requesting and instead placing them in the prison library of the facility where he was located.

Resolution: Upon review and consultation with counsel for the department, it agreed to provide the requested records. Because the KDOC agreed to and did promptly provide the complainant with the records he requested, this office determined no further formal enforcement action was necessary.

**Kansas Department of Corrections and Kansas Department of Health and Environment**

Complaint: An individual filed a complaint with this office alleging that the KDHE violated the KORA when it forwarded his request for records to the KDOC for response.

Resolution: Upon review and consultation with counsel for KDHE, this office discovered that it did not receive the individual's KORA request for any records KDHE gave to the KDOC related to measures that "should be taken to prevent the spreading of the corona virus [sic] in prisons." There was also no evidence that KDHE forwarded any request to the KDOC. The KDHE has a well-established process for documenting and responding to KORA requests and it simply had no record of the individual's KORA request. Once it became aware of the individual's request, KDHE agree to provide the one record that met the language of the KORA request. Because the KDHE agreed to provide records once it became aware of the request, this office determined no further enforcement action was necessary.

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**COMPLAINTS AGAINST CITIES  
RESULTING IN CORRECTIVE ACTION**

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**City of Overland Park**

Complaint: An individual filed two complaints alleging the city violated the KORA by failing to comply with the requirements of K.S.A. 45-218(d) and failing to provide a response to his second KORA request.

Resolution: Upon review, this office determined that the city's Community Services Division inadvertently failed to respond to a portion of the individual's KORA request. The city agreed to provide the requested records subject to any applicable statutory exemptions to disclosure. The city also indicated that it viewed what the complainant considered a second KORA request as the clarification it sought concerning a portion of his original submission. Due to internal confusion with another individual's KORA request, the city sent the complainant a letter denying his clarified request. In responding to an investigative inquiry from this office, the city discovered this response was in error and that it did not have any responsive records. Because of the acknowledged errors by the records custodian, the city failed to respond after its three-day letter; this violated the KORA. In mitigation, the errors did not appear to be an intentional effort to subvert the KORA or conceal records. Instead, the failure was the result of accidental oversights and a breakdown in internal communications, compounded by confusing the complainant's clarified request with a separate KORA request. The city agreed to provide any available records; it also addressed the failure to respond directly with the involved employee and arranged for additional KORA training for the Community Services Division. Although the pandemic delayed this training, this office confirmed that it did take place. This office determined that no further enforcement action was necessary to resolve this matter.

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

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### **Kansas City, Kansas Police Department**

Complaint: An individual filed a complaint with this office alleging that the KCKPD violated the KORA by failing to accept his written KORA request and instead directing him to file his request via the city’s online NextRequest portal.

Resolution: Upon review and consultation with counsel for the KCKPD, this office learned that the individual’s allegations were essentially correct. A Unified Government employee did advise the individual to file his request using the online NextRequest portal. This was due to her mistaken belief that the individual, who was in prison, “had some limited access to the internet for extremely narrow and controlled reasons, like filing KORA requests,” and that by using the online portal, it would be easier to track and respond to his requests. The KCKPD emphasized to this employee that KORA requests “are to be processed no matter the format, so long as they are written requests pursuant to K.S.A. 45-220(b).” The department responded in writing to the individual, advising him that it did not have any records responsive to his requests, and reviewed its internal procedures to ensure that this situation would not reoccur. Based on these actions, this office determined that no further enforcement action was necessary.

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## **COMPLAINTS AGAINST COUNTIES RESULTING IN CORRECTIVE ACTION**

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### **Coffey County Clerk’s Office**

Complaint: An individual filed a complaint with this office alleging that the county violated the KORA by denying her access to the county clerk’s text messages and recordings on her cell phone.

Resolution: This office consulted with the county attorney, who also acts as the county counselor, about this complaint. The county agreed that any text messages related to county business would be subject to disclosure unless a particular message, or portion of a message, fell under an exemption to disclosure. Due to an unfortunate and continuing malfunction of the clerk’s personal phone, which occurred prior to the KORA request, any text messages no longer existed. The clerk’s cell phone provider confirmed the continuing cell phone malfunction and that it could not restore any text messages. A public agency cannot provide records that do not exist. A video recording made during the relevant time did still exist. The requester argued that because the clerk received a stipend for the use of her personal phone for county business, the recording was subject to the KORA. The county argued the recording was not a public record because the clerk did not create and maintain it pursuant to her official duties, and thus it was not related to the functions, activities, programs or operations of the clerk’s office. Although a clerk’s duties are broad and varied, this office was not able to conclude that a clerk’s duties include using a personal cell phone to record brief interactions or encounters with members of the public while on her way to her official workstation and prior to the start of the workday. Thus, the recording was not subject to the KORA. The county conceded that the timeliness of the clerk’s response—a delay of some 42 days after the initial three day letter—did not comply with the requirements of K.S.A.



45-218(d). The delay was due in part to working with the clerk's cell phone provider in an attempt to repair her phone and retrieve text messages, the unique circumstances of the request, the clerk training to use new election equipment and dealing with the regular duties and obligations of her office, and a personal issue involving her son. While not an intentional effort to avoid or evade the requirements of the KORA, or to conceal records, the failure to explain the reason for the delay and provide the earliest date and time the records would be available violated the KORA. The county acknowledged its shortcomings; additionally, after the individual filed her complaint, county officials, including the clerk, attended a KORA training sponsored by this office. Because the county readily admitted its mistake and had already received training, this office determined no further enforcement action was necessary, but advised the county it would report this violation in the annual report.

### **Leavenworth County**

Complaint: An individual filed a complaint alleging that the county violated the KORA when it did not timely respond to her multiple KORA requests, denied access to vacation and sick leave payout records, did not answer her question asking for information, and "inconsistent and arbitrary charging" of fees to produce records.

Resolution: This office consulted with the county counselor concerning the allegations, and determined that the county's actions were consistent with the KORA regarding all issues except its decision to deny access to vacation and sick leave payout records. Although the county made a good faith argument that it was not required to disclose the records, thus protecting the privacy rights of county employees, based on the language of Attorney General Opinion 2010-3, this office determined that records containing the names, dates and dollar amounts of vacation or sick leave payouts are open. This office asked the county to provide the complainant with this information as requested. Although the county stood ready to produce the records, the complainant ultimately determined that she did not want the records. This office determined no further enforcement action was required.

### **Sherman County Sheriff's Office and County Commission**

Complaint: An individual filed a complaint alleging that the sheriff's office and the commission violated the KORA when they failed to respond to a separate KORA request for 28 separate categories of records related to a specific individual.

Resolution: This office consulted with the county attorney, who also acts as the county counselor, about the allegations. Investigation revealed that the complainant used an incorrect email address to send his KORA request to the sheriff's office. Because the sheriff's office did not receive the request for records, it did not violate the KORA. Investigation revealed the county commission received the complainant's KORA request. However, the complainant addressed his request jointly to the county attorney, the sheriff and the commission. This resulted in confusion on the part of the commissioners about what action they were required to take; the commissioners wrongly assumed that the county attorney was aware of and would handle the KORA request. One county commissioner also failed to regularly and timely check his county

## Kansas Open Records Act Complaints, continued

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email account. The county attorney conceded that these actions were inconsistent with the KORA, but were not deliberate or intentional efforts to avoid or evade compliance with the KORA. Once the county attorney discovered what happened, he reminded the commissioners about the county's KORA obligations, including the obligation to timely respond to any KORA request. The county attorney also agreed to and did promptly respond to complainant's KORA request. This office determined no further enforcement action was required.

### Wyandotte County Attorney's Office

Complaint: An individual filed a complaint with this office alleging that the district attorney's office violated the KORA by responding to his 10 KORA requests all at once instead of individually, and unreasonably delayed its response.

Resolution: This office consulted with the district attorney's office about this complaint, and concluded that it did not unreasonably delay its response by combining the requests together for a response. This office also concluded that any delays in responding were due in part to the extraordinary operational impacts of the pandemic on the district attorney's office, as well as the need to respond to pressing prosecutorial matters. Although this office asked the individual for any additional information he had to support the portion of his complaint concerning an unreasonable delay, he did not respond to this inquiry. With regard to the remainder of the complaint, this office determined that the district attorney was not the custodian of records for two categories of records; one category of records was not open based on prosecutorial immunity; the district attorney's office requested advance payment of fees, but the individual had not paid the requested fees concerning four categories of records; and there were no responsive records for one category. Finally, this office requested additional information about whether the individual had received two categories of records so that it could ensure the district attorney's office complied with its KORA obligations. However, the individual did not respond. This office determined no further formal enforcement action was necessary.

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## COMPLAINTS AGAINST OTHER AGENCIES RESULTING IN CORRECTIVE ACTION

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### Lakewood Middle School

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

Resolution: This office consulted with the attorney for the school district about this complaint. The district acknowledged that it failed to respond to the complainant's KORA request due to some internal shortcomings regarding the responsibilities imposed by the KORA, but denied that the shortcomings were an effort to subvert the KORA or conceal records from the complainant. Based on the information received, the shortcomings appeared to be the result of accidental oversights and a breakdown in internal communications. Essentially, multiple school administrators and employees were

individually trying to address the KORA request, resulting in no one person to track the KORA request or ensure the complainant received a complete response. The failure to respond violated the KORA. The district acknowledged its shortcomings and sought training; it also searched for any records responsive to the KORA request, but did not locate any. Additionally, it required that each school administrator identify one person within each school building to receive and coordinate the response to any KORA request. This office also asked the district to review and, if necessary, update its policy for the public to access and obtain copies of records under the KORA. The district promptly satisfied the remedial action request, and this office determined no further formal enforcement action was necessary.

### **Shawnee Mission School District**

Complaint: An individual filed a complaint with this office alleging the district violated the KORA when it did not respond to her KORA request.

Resolution: This office consulted with the attorney for the school district, who advised although there was a brief delay, the district was working to provide the records. The individual asked for copies of contracts; an employee had to pull these records individually. Normally this would not be an issue, however, due to the pandemic the district had a limited number of employees working in person. By the time the individual filed the complaint, the district had provided a portion of the records; it indicated it would continue to do so until it provided all responsive records. This office briefly monitored the district's efforts to provide the records, and confirmed it provided a complete response. Due to this resolution, this office determined no further enforcement action was necessary.

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## **REFERRALS TO COUNTY OR DISTRICT ATTORNEY OFFICES**

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- **City of Wichita** (Sedgwick County) – failure to respond within three business days (clerk filed a self-report of a violation with this office and with the district attorney's office; district attorney's office agreed it would handle the matter).
- **Johnson County Appraiser's Office** (Johnson County) – records request denied.
- **Kansas Department of Administration** (Shawnee County) – denied access to records; referred to Shawnee County District Attorney due to conflict.
- **Office of the Governor** (Shawnee County) – failure to respond after three day letter; referred to Shawnee County District Attorney due to conflict.
- **Lyon County** (Lyon County) – failure to provide records.
- **Lyon County Commission and Lyon County Public Health** (Lyon County) – failure to timely provide records.
- **Lyon County** (Lyon County) – failure to timely provide records.

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

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- **Herington Hospital** (Dickinson County) – failure to provide records.
- **Lyon County Comptroller and Lyon County Commission** (Lyon County) – failure to respond to request for records.

**COMPLAINTS RESULTING IN A FINDING OF NO VIOLATION**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
City of Herington	KORA – failure to provide requested records	<p>The city did not violate the KORA.</p> <p>The KORA provides a process for the public to access records that are made, maintained, kept by or in the possession of a public agency. The key to triggering the procedural requirements and protections of the KORA is the public agency’s receipt of a request that clearly invokes its provisions. A public agency is not required to assume that a request for records that does not mention the KORA is a KORA request.</p>
Fort Scott Police Department	KORA – unknown	The complainant did not respond to a request for clarification and supporting documents.
USD 234 School District (Fort Scott)	KORA – challenge to child’s diagnosis and IEP; seeking records	The complainant did not respond to a request for clarification and supporting documents.
Neodesha Police Department	KORA – requested copies of LEO audio/visual recordings	The complainant did not respond to a request for clarification and supporting documents.

## Kansas Open Records Act Complaints, continued

Public Body or Agency	Alleged Violations	Resolution
<p>Neosho County Commission and County Counselor Seth Jones</p>	<p>KORA – failure to provide requested records; request improperly denied based on K.S.A. 45-221(a)(20)</p>	<p>The commission and the county counselor 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 be held individually responsible for the actions of a public agency.</p> <p>The KORA provides that all public records are required to be open unless otherwise required by the Act. A public agency bears the burden of showing that it may close public records as provided by the KORA.</p> <p>Under the plain language of K.S.A. 2019 Supp. 45-219(a)(20), records expressing opinions or containing proposed policies or actions need not be disclosed. The purpose of this exception to disclosure is to permit a public agency to engage in and protect its internal predecisional deliberations. This section does not apply when the records are publicly cited or identified in an open meeting or the agenda of an open meeting.</p> <p>Under the KORA, if the requested records contain a mix of information—some of it open, but other parts that are closed by law—the public agency is required to redact the record to eliminate the closed information and provide the remaining portions of the public record to the requester. Redaction may not be possible if the records are draft documents that a public agency has not finalized, approved or adopted; a draft document is still under discussion and its contents not yet finalized.</p> <p>A public agency has discretion to determine to release records requested under this section.</p> <p>The KORA does not require a public agency to revise or update its response to a records request. If this were the case, essentially every KORA request would be a “standing request for records” and there would be no finality to a KORA request. The KORA does not require a public agency to honor “standing requests” for records as they become available. Such a request is not enforceable.</p>

**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
Wyandotte County Adult Detention Center	KORA – failure to provide requested records	The complainant did not complete the complaint form required by K.S.A. 45-252(a).
Lyon County Planning/Zoning /Floodplain Management Director	KORA – failure to provide all requested records	<p>The county 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 be held individually responsible for the actions of a public agency.</p> <p>The KORA provides access to public records. However, it does not govern how a public agency creates, maintains or formats its records. It also does not require a public agency to create records in order to respond to a KORA request. A public agency can only provide the records it has in its possession at the time of the request.</p> <p>Whether a public agency is required to create or maintain records to comply with K.S.A. 12-747(b), but failed to do so is outside the scope of the KORA.</p>
Unified Government of Wyandotte County / KCK	KORA – completed responses to KORA requests not available to the public on the UG online portal NextRequest	<p>The Unified Government did not violate the KORA.</p> <p>The KORA establishes a procedure to obtain access to and copies of public records. However, it does not govern how a public agency creates or maintains its records. It also does not contain any rules that require a public agency to post its records to any website. A public agency has discretion to determine how to create and maintain its records and whether to post them to a searchable database such as NextRequest.</p>

## Kansas Open Records Act Complaints, continued

Public Body or Agency	Alleged Violations	Resolution
Kansas Department of Health and Environment	KORA – failure to provide requested records	<p>The department did not violate the KORA.</p> <p>The KORA provides a procedural framework for public agencies to respond to requests for public records. A public agency must respond to a KORA request as soon as possible, but no later than the end of the third business day following the date that it receives the request. The KORA does not specify how a public agency communicates its three-day response or how formal it must be; the KORA simply requires that the public agency respond within three business days. An automated acknowledgment provided to a request submitted and received after business hours on a Friday was well within the three business days permitted by the KORA.</p> <p>In addition to the so-called “three-day rule,” K.S.A. 45-218(d) also provides that “[I]f access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection.” KDHE’s three-day initial response provided the additional required information to the best of its ability. Its initial response, which was timely, explained that KDHE would be required to search for records, which might contain both open and closed information requiring redaction. It further explained that it would generally grant access to the records within 10 business days, if federal and/or state law did not limit or prohibit access to or disclosure of the records. Finally, it explained there might be a delay due to an existing stay home order that was in effect, resulting in limited access to records.</p>
Shawnee City Council	KORA – inaccurate records	<p>The city council did not violate the KORA.</p> <p>The KORA establishes a procedure to obtain access to and copies of public records. However, it does not require a public agency to answer questions asking for information or to research questions. It also does not govern the accuracy of any records maintained by a public agency or ensure that the records requested will meet a specific or intended purpose. A public agency must only provide records in existence at the time of the request, subject to any statutory restrictions. It is up to a requester to ask for records that will meet a specific or intended purpose.</p>



**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
Kansas City, Kansas Police Department	KORA – failure to provide requested records	The complainant did not respond to a request to provide clarification and supporting documents.
City of Shawnee	KORA – inaccurate records	<p>The city did not violate the KORA.</p> <p>Simply because a public agency copied an individual on an email to a requester concerning the adequacy of a protest petition may not be sufficient to show standing to raise a KORA complaint. This office did not directly address this issue because even assuming the complainant had standing, the KORA does not require a public agency to answer questions asking for information or to research questions. It also does not govern the accuracy of any records maintained by a public agency or ensure that the records requested will meet a specific or intended purpose. A public agency must only provide records in existence at the time of the request, subject to any statutory restrictions. It is up to a requester to ask for records that will meet a specific or intended purpose and to comply with other legal requirements using the records provided by a public agency.</p>

**Kansas Open Records Act Complaints, continued**

<p>Jackson County Sheriff Tim Morse</p>	<p>KORA – failure to provide requested records</p>	<p>The sheriff’s office 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 be held individually responsible for the actions of a public agency.</p> <p>A public agency must only produce records in existence at the time of the request, subject to any statutory restrictions. A public agency cannot provide records it does not have.</p> <p>One restriction or exemption to disclosure concerns criminal investigation records; a public agency is not required to disclose criminal investigation records. The definition of criminal investigation records includes every audio or video recording made and retained by law enforcement using a body or vehicle camera. Ordinarily, a public agency cannot be compelled to produce criminal investigation records absent a court order. However, K.S.A. 45-254 establishes special rules providing for limited access to body worn and vehicle camera recordings. While not every individual is permitted to access such recordings, a person who is the subject of any such recording or any parent or legal guardian of a person under 18 years of age who is a subject of the recording “may make a request . . . to listen to any audio recording or to view a video recording made by a body camera or a vehicle camera. The law enforcement agency shall allow the person to listen to the requested audio recording or to view the requested video recording within 20 days after making the request, and may charge a reasonable fee for such services provided by the law enforcement agency.”</p> <p>K.S.A. 45-221(a)(10) provides: “If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.” Essentially, while criminal investigation records may be discretionarily closed, this section provides criteria for judicial review of the decision to close the records. Once a public agency provides a written citation to the specific provisions of paragraphs (A) through (F), “[T]he district court, in an action brought pursuant to K.S.A. 45-222 and amendments thereto, may order disclosure of such</p>
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**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
		<p>records, subject to such conditions as the court may impose, if the court finds that disclosure” would be in the public interest; not interfere with any prospective law enforcement action/investigation/prosecution, reveal the identity of any confidential source/undercover agent, or any investigative techniques or procedures not known to the general public, endanger the life or physical safety of any person, and/or reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense. Under this section, ultimately it may be up to a court to determine whether a public agency must disclose any criminal investigation records.</p> <p>A public agency cannot provide records that it does not have, and is not required to create a record in order to respond to a KORA request.</p>

## Kansas Open Records Act Complaints, continued

<p>Lawrence Police Department</p>	<p>KORA – denied access to records</p>	<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. Generally, 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 these records. Another restriction or exemption to disclosure protects records from release if public disclosure would constitute a clearly unwarranted invasion of personal privacy.</p> <p>Ordinarily, a public agency cannot be compelled to produce criminal investigation records absent a court order. K.S.A. 45-254 establishes special rules providing for limited access to body worn and vehicle camera recordings, which are considered criminal investigation records. While not every individual is permitted to access such recordings, a person who is the subject of any such recording or any parent or legal guardian of a person under 18 years of age who is a subject of the recording “may make a request . . . to listen to any audio recording or to view a video recording made by a body camera or a vehicle camera. The law enforcement agency shall allow the person to listen to the requested audio recording or to view the requested video recording within 20 days after making the request, and may charge a reasonable fee for such services provided by the law enforcement agency.”</p> <p>Knowing or being related to an individual who is mentioned in public records does not give a requester a greater right of access to the records. Once a privacy right is implicated, the question then becomes whether there is any legitimate public interest in disclosure of the requested information. “Such a public interest may exist if release of the information would shed any light on the conduct of a government agency or official. If release would shed no light, the agency may withhold the information. If disclosure would shed light on government conduct, courts try to balance the public interest in its release against the implicated privacy interest.”</p> <p>Under the KORA, if the requested records contain a mix of information—some of it open, but other parts that are closed by law—the public agency is required to redact the</p>
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**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
		<p>record to eliminate the closed information and provide the remaining portions of the public record to the requester. Redaction may not be possible if the records concern criminal cases that a public agency does not consider closed.</p>
<p>Finney County Judge Kristin Kandt (also General Counsel for Finney County)</p>	<p>KORA – county failed to explain why it would not adopt a draft guidance document concerning fees</p>	<p>The county 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 be held individually responsible for the actions of a public agency.</p> <p>The KORA establishes a procedure that allows the public to request access to or copies of public records. It also permits a public agency to establish reasonable fees for providing access to or copies of public records. Fees for copies cannot exceed the actual cost, including the cost of staff time, to produce the records. A public agency may also require payment of fees in advance.</p> <p>The KORA does not require a public agency to answer questions asking for information, conduct research, or create records to respond to a request for records.</p>
<p>18th Judicial District Court Appellate Department</p>	<p>KORA – failure to provide records in format requested</p>	<p>The Appeals Department did not violate the KORA.</p> <p>The KORA permits a public agency to establish reasonable fees for accessing and providing copies of public records. Fees for copies cannot exceed the actual cost, including the cost of staff time, to produce the records. A public agency may also require advance payment of fees. A fee of \$.25 per page is reasonable.</p> <p>A public agency cannot provide records that it does not have, and is not required to obtain records from others in order to respond to a KORA request.</p>

**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
Shawnee County, Shawnee County Clerk, Shawnee County Detention Center	KORA – failure to provide requested records	<p>The county did not violate the KORA; the complaint was premature.</p> <p>The KORA establishes a procedure that permits the public to obtain access to or copies of public records. A public agency must act on a request for records as soon as possible, but no later than the end of the third business day following the date it receives the request. There are three acceptable responses to a KORA request: provide the record; advise that the request is under review and the records, if open, will follow; or deny the request. If a public agency denies the request, a records custodian must provide, upon request, a written statement of the grounds for denial that cites the specific provision of law under which access is denied.</p>

**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
<p>Kansas City, Kansas Community College</p>	<p>KORA – failure to provide requested records; grade appeal</p>	<p>The college did not violate the KORA.</p> <p>Matters involving grade appeals, college grievance process, alleged failure to comply with accreditation standards, etc., fall outside the scope of the KORA.</p> <p>The Freedom of Information Act, also known as FOIA, is a federal law that establishes a process for any person to request access to federal agency records or information. It does not apply to public records made, maintained, kept by or in the possession of a public agency as defined by the KORA.</p> <p>The KORA establishes a procedure that permits the public to obtain access to or copies of public records. A public agency must act on a request for records as soon as possible, but no later than the end of the third business day following the date the public agency receives the request. There are three acceptable responses to a KORA request: provide the records; advise that the request is under review and the records, if open, will follow; or deny the request.</p> <p>A public agency may request advance payment of fees to respond to a KORA request. These fees cannot exceed the actual costs of providing the records. Actual costs include the cost of staff time to search for and make records available to the requester. A public agency may, but is not required to, waive fees or make records available for free.</p> <p>The KORA does not require a public agency to answer questions asking for information or to conduct research. It also does not require a public agency to create records to respond to a KORA request. A public agency must only produce records in existence at the time of the request, subject to any statutory restrictions.</p>
<p>Neosho County (Road and Bridge Department)</p>	<p>KORA – excessive fees</p>	<p>This office declined further review because the county attorney had already reviewed and resolved the matter.</p>

## Kansas Open Records Act Complaints, continued

Public Body or Agency	Alleged Violations	Resolution
Coffey County Clerk Angie Kirchner	KORA – failure to provide requested records	This office declined further review due to county attorney intervention to resolve the matter.
Audit Services – Johnson County Kansas Government	KORA – commissioner did not respond to correspondence	<p>The county 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 be held individually responsible for the actions of a public agency.</p> <p>The key to triggering the procedural requirements and protections of the KORA is receipt of a request that clearly invokes its provisions. A public agency that receives a request that invokes the KORA must only produce records in existence at the time of the request, subject to any statutory restrictions. The KORA does not require a public agency to answer questions asking for information or to research questions.</p>
Wichita Police Department	KORA – denied access to records	<p>The city did not violate the KORA.</p> <p>The KORA provides that all public records are open unless otherwise required by the Act. A public agency bears the burden of showing that it may close public records as provided by the KORA.</p> <p>Under the plain language of K.S.A. 2019 Supp. 45-219(a)(20), records expressing opinions or containing proposed policies or actions or that constitute data in the process of analysis are not required to be disclosed. The purpose of this exception to disclosure is to permit a public agency to engage in and protect its internal predecisional deliberations. This section does not apply when the records are publicly cited or identified in an open meeting or the agenda of an open meeting.</p>



**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
City of Wichita	KORA – failure to provide requested records/discovery related to impeachment	<p>The city 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. Generally, a public agency must only produce records in existence at the time of the request, subject to any statutory restrictions. A public agency cannot provide records it does not have.</p> <p>One restriction or exemption to disclosure concerns personnel records; a public agency is not required to disclose all personnel records. The only exception is that a public agency may disclose “the names, positions, salaries or actual compensation employment contracts or employment-related contracts or agreements and lengths of service of officers and employees of public agencies once they are employed as such.”</p> <p>Concerns related to obtaining evidence or discovery in a criminal case are outside the scope of the KORA.</p>
Judge Robert Bednar, Sherri Becker, KiAnn Caprice	KORA – failure to provide trial evidence	<p>The named individuals did not violate the KORA.</p> <p>Challenges related to trial proceedings and related matters are outside the scope of the KORA.</p> <p>Complainant provided no evidence that he ever submitted a KORA request. The KORA provides a process for the public to access records that are made, maintained, kept by or in the possession of a public agency. The key to triggering the procedural requirements and protections of the KORA is a public agency’s receipt of a request that clearly invokes its provisions.</p>

**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
City of Junction City	KORA – failure to maintain records	<p>The city did not violate the KORA.</p> <p>The KORA establishes a procedure that allows the public to request access to and copies of public records upon receipt of a request that clearly invokes its provisions. However, a public agency is only required to provide a requester with access to or copies of public records it has in its possession; a public agency is not required to create records to respond to a KORA request.</p> <p>Any alleged failure to maintain records under a separate city policy requiring they be maintained is outside the scope of the KORA.</p>
Reno County District Attorney's Office	KORA – failure to respond	The complainant voluntarily withdrew her complaint after receiving the requested records.
Blue Valley School District	KORA – failure to provide requested records	The complainant did not respond to a request to complete a complaint form as required by K.S.A. 45-252(a), or to provide clarification and supporting documents.
Leavenworth County District Court	KORA – failure to provide requested records	The complainant did not respond to a request to provide clarification and supporting documents.

**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
Johnson County District Attorney Steve Howe	KORA – denied access to criminal investigation records	<p>The district attorney’s office 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 be held individually responsible for the actions of a public agency.</p> <p>The KORA does not require a public agency to disclose criminal investigation records. However, a district court may order that the records be disclosed subject to any conditions that it may impose only after an action is brought for that purpose and the court finds disclosure meets the conditions of K.S.A. 45-221(a)(10)(A)-(F). Because the KORA has a process in place that can be used to determine whether criminal investigation records should be released, this office declined to supplant this process or substitute its judgment for that of a district court, especially where a requester has not had the opportunity to argue why release of the records may be in the public interest and a public agency has not had the opportunity to make arguments in support of closure to protect the life or physical safety of any person.</p>

**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
City of Overland Park	KORA – denied access to records	<p>The city did not violate the KORA.</p> <p>How a public agency determines to maintain its records and the purpose for which such records are used is outside the scope of the KORA.</p> <p>The KORA establishes a process for the public to obtain access to and copies of records that are made, maintained, kept by or in the possession of a public agency. Under the KORA, all public records are open unless otherwise required by the Act. The KORA does not prohibit a public agency from disclosing unredacted copies of the records. Instead, it allows a public agency the discretion to determine whether to release the records if they fall under one of the exemptions to disclosure listed in the KORA. A public agency bears the burden of showing that it may close public records as provided by the KORA. If the records contain a mix of open and closed information, a public agency must separate the open from the closed information and release the information that is subject to disclosure.</p> <p>The KORA is not a substitute for discovery in a civil or criminal case. Civil discovery might provide greater access to records; the rules of civil procedure provide an adequate mechanism for discovery. A prosecutor may be required to provide discovery of all appropriate records related to a criminal matter. The KORA does not give individual defendants or those with possible civil claims a special status or greater rights of access to public records simply because the public records may be about them or their property.</p>

**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
City of Mission, Kansas Police Department	KORA – failure to provide requested records; failure to investigate officer	<p>The city did not violate the KORA.</p> <p>The KORA establishes a procedure that allows the public to request access to and copies of public records. The key to triggering the procedural requirements and protections of the KORA is receipt of a request that clearly invokes its provisions. A public agency that receives a request that invokes the KORA must only produce records in existence at the time of the request, subject to any statutory restrictions. The KORA does not require a public agency to answer questions asking for information or to research questions.</p> <p>Complaints about police conduct are outside the scope of the KORA</p>
Bourbon County Sheriff's Office	KORA – removed public postings from Facebook	<p>The sheriff'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. It establishes a procedure that permits the public to access public records, subject to any applicable statutory restrictions. Nothing in the KORA governs whether or how a public agency chooses to utilize the internet to post information about its activities. The KORA also does not establish any rules concerning records retention.</p> <p>Whether the sheriff's office complied with any applicable records retention schedules is outside the scope of the KORA.</p>

## Kansas Open Records Act Complaints, continued

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
Saint Francis Ministries	KORA – failure to provide requested records	<p>This office declined to find a violation of the KORA based on the facts presented. This office declined to express an opinion concerning whether Saint Francis Ministries is a public agency within the meaning of the KORA.</p> <p>The KORA provides a process for the public to access records that are made, maintained, kept by or in the possession of a public agency. 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 and the individual provided no evidence that she submitted a KORA request.</p> <p>Matters related to allegations of discrimination, defamation and slander, etc., are outside the scope of the KORA.</p>
Kingman Co. Register of Deeds	KORA – failure to provide requested records	<p>The register of deeds office 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 be held individually responsible for the actions of a public agency.</p> <p>The KORA provides a procedure that permits the public to access or obtain copies of public records held by public agencies. However, it does not require a public agency to respond to requests seeking information or answers to questions. It also does not require a public agency to conduct or provide requesters with legal or other research. A public agency must only provide records in existence at the time of the request, subject to any statutory restrictions.</p>

**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
Unified Government of Wyandotte County / KCK	KORA – failure to provide requested records	<p>The Unified Government did not violate the KORA.</p> <p>The KORA establishes a procedure that permits the public to access or obtain copies of public records held by public agencies. The records custodian of a public agency must only provide records in existence at the time of the request, subject to any statutory restrictions. If a KORA request is directed to a records custodian that is not the custodian of the public record(s) requested, the custodian “shall so notify the requester and shall furnish the name and location of the custodian of the public record, if known to or readily ascertainable by such person.” Neither a public agency nor a records custodian is required to obtain copies of records it does not have to satisfy a KORA request.</p>
Centurion (Medical provider for Kansas Department of Corrections)	KORA – failure to provide requested records	<p>Centurion did not violate the KORA.</p> <p>The KORA establishes a procedure that allows the public to request access to and copies of public records held by a public agency. The key to triggering the KORA’s provisions concerning the ability to access and obtain copies of public records, is a <i>public agency’s</i> receipt of a request for records that clearly indicates the KORA’s provisions are being invoked. However, a public agency under the KORA does not include any entity solely because it receives payment from public funds for property, goods, or services of such entity.</p>
Marion County	KORA – failure to provide record in written format	<p>The county did not violate the KORA.</p> <p>The KORA establishes a procedure that allows the public to request access to and copies of public records held by a public agency, subject to any statutory exemptions from disclosure. However, in responding to a KORA request, a public agency can only provide copies of records that it actually has in its possession.</p> <p>The KORA does not govern records retention.</p>

**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
Kansas Department for Aging and Disability Services	KORA – failure to provide requested records	The complainant did not respond to a request to provide clarification and supporting documents.
USD 237 Board of Education (Smith Center)	KORA – failure to provide requested records	The complainant did not respond to a request to provide clarification and supporting documents.
Wichita and Olathe Parole Offices	KORA – not permitted to review documents in his parole file	The complainant did not respond to a request to provide clarification and supporting documents.



**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
Andover Police Department	KORA – denied access to records	<p>The department did not violate the KORA.</p> <p>The KORA establishes a procedure that allows the public to request access to and copies of public records held by a public agency, subject to any statutory exemptions from disclosure. However, in responding to a KORA request, a public agency can only provide copies of records that it actually has in its possession.</p> <p>K.S.A. 45-218(d) provides in part that if a public agency denies a request for access to records, the custodian shall provide, <i>upon request</i>, a written statement of the grounds for denial. In its statement, the public agency must cite the specific provision of law it relied on to deny access; it must also provide this statement to the requester no later than the end of the third business day following the date it received the request. A public agency is not required to provide the statement unless requested.</p> <p>K.S.A. 45-227(a) requires a public agency to “make available” a brochure or information that describes how to make a KORA request. Posting such information on the public agency’s website and in a city code, as well as the freedom of information officer readily answering questions about how to make a KORA request, satisfies this requirement.</p>

**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
<p>Kansas Department of Health and Environment</p>	<p>KORA – denied access to records</p>	<p>The department did not violate the KORA.</p> <p>The KORA generally declares that public records shall be open for inspection by any person unless otherwise provided by the Act. The KORA provides that a public agency may not be required to disclose certain records; there are some 55 categories of records that public agencies are not required to disclose. The KORA does not prohibit disclosure of records contained within these exceptions, but makes their release discretionary with the agency’s official records custodian. The burden is on the public agency opposing disclosure to justify the decision not to release the public record.</p> <p>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.</p> <p>The Legislature clarified the meaning of, and balancing test for, K.S.A. 45-221(a)(30) concerning the definition of a “clearly unwarranted invasion of personal privacy.” This refined the balancing test articulated in <i>Data Tree LLC v. Meek</i>, 279 Kan. 445, 455, 109 P.3d 1226 (2005). It did not alter or remove the requirement that a records custodian exercise discretion when determining whether to release records. The KORA provides a records custodian discretionary authority to allow or prohibit public access to some categories of public records, including those that contain information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. Essentially, K.S.A. 45-221(a)(30) entrusts to a records custodian the obligation to weigh and balance competing interests of privacy against public disclosure of private information held by the government by considering whether release of the information “would be highly offensive to a reasonable person.”</p>

**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
Kansas State University	KORA – failure to provide requested records	<p>The university did not violate the KORA. This office asked the university to review its internal processes to ensure that it responds to all KORA requests in a timely manner. The university promptly complied this request.</p> <p>The KORA generally declares that public records shall be open for inspection by any person unless otherwise provided by the Act. The KORA provides that a public agency may not be required to disclose certain records; there are some 55 categories of records that public agencies are not required to disclose. The KORA does not prohibit disclosure of records contained within these exceptions, but makes their release discretionary with the agency’s official records custodian. The burden is on the public agency opposing disclosure to justify the decision not to release the public record.</p> <p>The KORA does not require a public agency to disclose personnel records and individually identifiable records pertaining to applicants.</p> <p>The KORA does not require a public agency to disclose letters of reference or recommendations pertaining to the character or qualifications of an individual.</p> <p>The KORA does not require a public agency to disclose notes, preliminary drafts, memoranda, recommendations or other records in which opinions are expressed or actions are proposed are not required to be open unless publicly identified or cited in an open meeting or the agenda of an open meeting.</p> <p>Under the KORA, if the requested records contain a mix of information—some of it open, but other parts that are closed by law—the public agency is required to redact the record to eliminate the closed information and provide the remaining portions of the public records. If the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals’ identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record that pertain to such individual or individuals.</p>

## Kansas Open Records Act Complaints, continued

Public Body or Agency	Alleged Violations	Resolution
Office of the Governor	KORA – failure to respond after three day letter	The complainant did not respond to a request to complete a complaint form as required by K.S.A. 45-252(a).
Lyon County Planning and Zoning	KORA – county clerk renames/ rennumbers KORA requests, which is confusing to complainant	<p>The county did not violate the KORA.</p> <p>Action taken by a public agency to provide records, assist in wording records requests, or simply updating a requester over time concerning pending requests are all consistent with the KORA.</p> <p>A public agency is free to organize its records, including KORA requests, in a way that makes it easy for them to locate, track and respond to the requests. This is especially true when there are numerous requests from one individual to track, and helps the public agency ensure it responds to the requests in a timely manner.</p>
Kansas Department of Labor	KORA – unknown	The complainant did not respond to a request to complete a complaint form as required by K.S.A. 45-252(a), or to provide clarification and supporting documents.
Lyon County Commission and Lyon County Counselor	KORA – unknown	The complainant did not respond to a request to provide clarification and supporting documents.
Lyon County Road and Bridge, Lyon County Engineer	KORA – unreasonable fees	The complainant did not respond to a request to provide clarification and supporting documents.
Kansas Highway Patrol	KORA – failure to provide requested records	The complainant did not respond to a request to provide clarification and supporting documents.

**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
City of Paxico	KORA – failure to respond	<p>The city did not violate the KORA.</p> <p>The KORA establishes a procedure that allows the public to request access to and copies of public records held by a public agency. The key to triggering the KORA’s provisions concerning the ability to access and obtain copies of public records is a public agency’s receipt of a request for records that clearly indicates the requester is invoking the KORA’s provisions. A public agency that receives a request invoking the KORA must only produce records in existence at the time of the request, subject to any statutory restrictions. The KORA does not require a public agency to answer questions asking for information or to research and provide answers to questions.</p>
Southeast Kansas Area Agency on Aging	KORA – failure to provide information	<p>The agency did not violate the KORA.</p> <p>The KORA establishes a procedure that allows the public to request access to and copies of public records held by a public agency. The key to triggering the KORA’s provisions concerning the ability to access and obtain copies of public records is a public agency’s receipt of a request for records that clearly indicates the requester is invoking the KORA’s provisions. A public agency that receives a request invoking the KORA must only produce records in existence at the time of the request, subject to any statutory restrictions. The KORA does not require a public agency to answer questions asking for information or to research and provide answers to questions.</p>
City of Herington	KORA – failure to provide requested records	The complainant did not respond to a request to provide clarification and supporting documents.
City of Augusta	KORA – denied access to records	The complainant did not respond to a request to provide clarification and supporting documents.
Osage Township	KORA – unreasonable delay in providing records	<p>The township did not violate the KORA.</p> <p>The KORA permits a public agency to seek clarification of a request for records to ensure it understands what a requester is seeking.</p>

**Kansas Open Records Act Complaints, continued**

<b>Public Body or Agency</b>	<b>Alleged Violations</b>	<b>Resolution</b>
Kansas Legislative Research Department	KORA – failure to respond	<p>The research department did not violate the KORA.</p> <p>A public agency cannot respond to a KORA request that it did not receive.</p> <p>If a public agency receives a request for records for which it is not the records custodian, it must notify the requester and furnish the name and location of the custodian the public record, if known or readily ascertainable by such person.</p>

**NOTE:** In addition to the foregoing, the Office of the Attorney General received 30 complaints using the KOMA/KORA complaint form that did not state a violation of the KOMA or the KORA.

## Counties Reporting KOMA/KORA Complaints

<b>County</b>	<b>County or District Attorney</b>	<b>Report</b>
Allen	Jerry B. Hathaway	No KOMA/KORA complaints to report
Anderson	Elizabeth Lee Oliver	No KOMA/KORA complaints to report
Atchison	Sherri Becker	No KOMA/KORA complaints to report
Barber	Daniel O. Lynch	No KOMA/KORA complaints to report
Barton	M. Levi Morris	No KOMA/KORA complaint to report
Bourbon	Jacquie Spradling (during the reporting period)	No report filed
Brown	Kevin M. Hill	No KOMA/KORA complaints to report
Butler	Darrin C. Devinney	No report filed
Chase	William F. Halvorsen	No report filed
Chautauqua	Ruth A. Ritthaler	No KOMA/KORA complaints to report
Cherokee	Nathan R. Coleman	No KOMA/KORA complaints to report
Cheyenne	Leslie Beims	No KOMA/KORA complaints to report
Clark	Joseph H. Milavec	No KOMA/KORA complaints to report
Clay	Joel P. Mason	No report filed
Cloud	Robert A. Walsh	No KOMA/KORA complaints to report

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

<b>County</b>	<b>County or District Attorney</b>	<b>Report</b>
Coffey	Wade H. Bowie II	<p>A citizen filed two complaints against the Coffey County Housing Authority alleging violation of K.A.R. 16-20-1 by holding monthly meetings at the CCHA office, which did not allow for social distancing or livestreaming the meetings. Following an investigation, the county attorney concluded that the CCHA did not violate the KOMA. The KOMA does not require a public body or agency subject to the KOMA to livestream a meeting on YouTube or any other media platform as long as the public body or agency is otherwise meeting the requirements of KOMA. The main requirement related to “access” to a meeting under KOMA is that “all meetings [subject to KOMA] shall be open to the public.” The “KOMA does not dictate the location of the meeting, the size of the room, or other accommodation considerations.” The KOMA does require that a meeting be open to the public not be “at such an inconvenient location or in a room so small as to make it inaccessible for public attendance.” However, if a meeting is determined to be at an inconvenient location or in a small room inaccessible for public attendance, “the meeting might effectively be considered improperly closed under KOMA.” The CCHA’s response demonstrated that the meeting location was not inconvenient or inaccessible. The CCHA also provided an example where it relocated a regular meeting to accommodate increased visitor attendance. The CCHA also demonstrated that the regular meetings are historically only attended by the five board members, the Executive Director, and the Administrative Assistant but not the public.</p> <p>No KORA complaints to report.</p>
Comanche	Cynthia Long	No KOMA/KORA complaints to report



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

<b>County</b>	<b>County or District Attorney</b>	<b>Report</b>
Cowley	Larry R. Schwartz	The county attorney received and investigated a KOMA complaint that the Cowley College Board of Trustees discussed items in executive session that were not proper subjects based on the motion as stated. The county attorney concluded that the board did not violate the KOMA because discussion of the items in question was relevant to the stated reason for the executive session.  No KORA complaints to report.
Crawford	Reina J. Probert	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 KOMA/KORA complaints to report
Douglas	Susanne Valdez	No KOMA/KORA complaints to report
Edwards	Mark Frame	No report filed
Elk	Jill R. Gillett	An individual reported an Elk County commissioner violated the KOMA because she was abusing her office. Following an investigation, the county attorney concluded the commissioner did not violate the KOMA.  No KORA complaints to report.
Ellis	Robert A. Anderson, Jr.	No KOMA/KORA complaints to report
Ellsworth	Paul J. Kasper	No KOMA/KORA complaints to report
Finney	Susan H. Richmeier	No report filed
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 report filed
Grant	Kelly Premer Chavez	No KOMA/KORA complaints to report

## Counties Reporting KOMA/KORA Complaints, continued

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<b>County</b>	<b>County or District Attorney</b>	<b>Report</b>
Gray	Curtis E. Campbell	No KOMA/KORA complaints to report
Greeley	Charles F. Moser	No KOMA/KORA complaints to report
Greenwood	Jill R. Gillett	No KOMA/KORA complaints to report
Hamilton	Robert H. Gale, Jr.	No KOMA/KORA complaints to report
Harper	Richard Raleigh	No report filed
Harvey	Heather L. Figger	No KOMA/KORA complaints to report
Haskell	Lynn Koehn	No KOMA/KORA complaints to report
Hodgeman	Mark A. Cowell	No report filed
Jackson	Shawna R. Miller	No KOMA/KORA complaints to report
Jefferson	Josh Ney	No KOMA/KORA complaints to report
Jewell	Alexandria Carabajal	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>On February 11, 2020, the office received a KOMA complaint from an individual alleging the Shawnee City Council, Mayor, City Manager and City Attorney violated the KOMA during a meeting on January 13, 2020. The alleged violations related to the mayor unilaterally tabling two separate tie votes during the meeting, as well as the city manager whispering to the mayor during the meeting without those comments being recorded in the meeting minutes. On September 30, 2020, the office sent a letter to the individual concluding that after a thorough investigation there were no actionable violations of the KOMA.</p> <p>On September 1, 2020, the Kansas Attorney General forwarded to the office a complaint from an individual alleging the Blue Valley Board of Education violated the KOMA. The alleged violations related to the board’s adoption of the Kansas State Department of Education’s Navigating Change Gating Criteria. On October 14, 2020, the office sent a letter to the complainant concluding that after a thorough investigation there were no actionable violations of the KOMA.</p> <p>On March 1, 2021, the office received a KOMA complaint from an individual concerning potential violations by a Spring Hill School Board member related to Facebook Posts. Upon review, the office concluded the concern was not a KOMA matter. On April 6, 2021, the office sent a letter to the complainant advising it was closing the matter.</p> <p>On September 15, 2020, the Kansas Attorney General’s Office forwarded to the district attorney’s office a complaint from an individual alleging the Johnson County Appraiser’s Office violated the KORA. The alleged violations related to a request for records the appraiser’s office denied. The Johnson County Appraiser’s Office ultimately provided the records and the complainant advised the matter was resolved. On October 8, 2020, the office sent a letter to the complainant closing the matter due to the complainant’s position that the situation was resolved.</p>
Kearny	Eloy Gallegos	No report filed

## Counties Reporting KOMA/KORA Complaints, continued

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<b>County</b>	<b>County or District Attorney</b>	<b>Report</b>
Kingman	Matthew W. Ricke	No KOMA/KORA complaints to report
Kiowa	Chay Howard	No KOMA/KORA complaints to report
Labette	Mandy Johnson	No KOMA/KORA complaints to report
Lane	Dale E. Pike	No KOMA/KORA complaints to report
Leavenworth	Todd Thompson	No KOMA/KORA complaints to report
Lincoln	Scott D. Wright	No KOMA/KORA complaints to report
Linn	Burton Harding	No KOMA/KORA complaints to report
Logan	Craig L. Uhrich	No KOMA/KORA complaints to report

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

<b>County</b>	<b>County or District Attorney</b>	<b>Report</b>
Lyon	Marc Goodman	<p>No KOMA complaints to report.</p> <p>A KORA complaint alleged that the Lyon County Planning/Zoning/Floodplain Management Director did not provide the complainant with records regarding grants received by Lyon County since 2015. After review by the county attorney, the county sent correspondence to the complainant advising which departments had received grants in the past four years.</p> <p>A KORA complaint alleged that the Lyon County Comptroller and County Commission failed to provide all meeting material from every meeting held by CARES committees and persons meeting in any capacity to discuss CARES fund allocation. The county attorney resolved this matter by directing all individual departments to search for and provide the requested records.</p> <p>A KORA complaint alleged that Lyon County and Lyon County Planning failed to provide an individual with a copy of the recordings of the board’s December 9, 2020, meeting, which had been destroyed. The county attorney resolved this matter by directing all relevant departments to verify the requested records no longer existed.</p> <p>A KORA complaint alleged that Lyon County and Lyon County Planning denied an individual access to an audio recording after an assistant county attorney communicated that the recording “was for personal use and is therefore not an open record.” The audio recording was subsequently destroyed. The county attorney resolved this matter by directing all relevant departments to verify the requested records no longer existed.</p>
Marion	Joel Ensley	No report filed

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

<p>Marshall</p>	<p>Meghan K. Voracek</p>	<p>A complaint alleged violations of the KOMA and the KORA. The KOMA complaint alleged the county commission failed to “properly announce” executive sessions. The KORA complaint alleged the commission did not allow the public to review windfarm contracts. Complaint referred to the Attorney General’s Office. The Attorney General’s Office accepted jurisdiction of the KOMA complaint only, and will report the results of this investigation in the Annual Report for Fiscal Year 2022. After review, the Attorney General’s Office determined the KORA complaint did not state a violation and declined to accept the referral.</p> <p>A complaint alleged violations of the KOMA and the KORA. The KOMA complaint alleged that the commission engaged in discussions with windfarm representative through third parties. The KORA complaint alleged that windfarm agreements were not open to the public. Complaint referred to the Attorney General’s Office. After review, the Attorney General’s Office determined the complaints did not state a violation of the KOMA or the KORA and declined to accept the referral.</p> <p>A KOMA complaint alleged the “failure to announce” executive sessions and holding executive sessions when the subject was not proper for executive session. Complaint referred to the Attorney General’s Office because there was not enough detailed information to proceed. After review, the Attorney General’s Office declined to accept the referral based on a lack of detailed information or the information provided did not state a violation of the KOMA.</p> <p>A phone call complaint alleged the commission violated the KOMA by not “properly announcing” executive sessions. Complaint referred to the Attorney General’s Office because there was not enough detailed information to proceed. After review, the Attorney General’s Office declined to accept the referral based on a lack of detailed information or the information provided did not state a violation of the KOMA.</p> <p>A complaint alleged the county violated the KORA because an attorney did not submit his monthly invoice to the commission so that the public could see his</p>
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**Counties Reporting KOMA/KORA Complaints, continued**

<b>County</b>	<b>County or District Attorney</b>	<b>Report</b>
		work. Complaint referred to the Attorney General's Office because there was not enough detailed information to proceed. After review, the Attorney General's Office declined to accept the referral based on a lack of detailed information or the information provided did not state a violation of the KORA.
McPherson	Gregory 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	Lisa D. Montgomery	No KOMA complaints to report.  A KORA complaint alleged that the Montgomery County Clerk provided a 2020 payroll listing in an Excel compatible format, but sent the file in a password protected format without providing the password. The County Clerk was asked to and did provide the password to the record.
Morris	Laura E. Viar	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	Jacob T. Gayer	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
Ottawa	Richard A. Buck	No report filed
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

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

<b>County</b>	<b>County or District Attorney</b>	<b>Report</b>
Rawlins	Isaac LeBlanc	No KOMA/KORA complaints to report
Reno	Thomas R. Stanton	No KOMA/KORA complaints to report
Republic	Justin Ferrell	No KOMA/KORA complaints to report
Rice	Remington S. Dalke	No KOMA/KORA complaints to report
Riley	Barry R. Wilkerson	No KOMA/KORA complaints to report
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	Jeffery Ebel	No KOMA/KORA complaints to report
Scott	Rebecca J. Faurot	No KOMA/KORA complaints to report
Sedgwick	Marc A. Bennett	No KOMA complaints to report.  A KORA complaint alleged that the city withheld certain requested financial records related to the Tourism and Convention Fund and the Transient Guest Tax. The district attorney concluded the city did not violate the KORA.
Seward	Russell W. Hasenbank	No report filed



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

<b>County</b>	<b>County or District Attorney</b>	<b>Report</b>
Shawnee	Michael Kagay	<p>No KOMA complaints to report.</p> <p>A KORA complaint alleged the Kansas Department of Administration failed to provide employment records to the requesting party. The requested records dealt with employees of the Kansas Highway Patrol. The district attorney concluded the department did not violate the KORA. The department’s response was timely and it properly exercised its discretion in closing records.</p> <p>A KORA complaint alleged that the Office of the Governor failed to timely provide a summary report prepared by outside counsel. The report was prepared after outside counsel was hired to investigate personnel issues with the Kansas Highway Patrol. The district attorney concluded the governor’s office did not violate the KORA. The governor’s office exercised the attorney-client privilege, as well as other exceptions, that allowed it to close the record in question. Ultimately, after redactions, the governor’s office released the report voluntarily when closure was no longer warranted.</p>
Sheridan	Harry Joe Pratt	No KOMA/KORA complaints to report
Sherman	Bret Mangan	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 Craig Black	No KOMA/KORA complaints to report
Stevens	Paul F. Kitzke	No KOMA/KORA complaints to report
Sumner	Larry L. Marczyński II	No KOMA/KORA complaints to report
Thomas	Christopher A. Rohr	No KOMA/KORA complaints to report
Trego	Curtis Brown	No KOMA/KORA complaints to report
Wabaunsee	Timothy Liesmann	No KOMA/KORA complaints to report

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

<b>County</b>	<b>County or District Attorney</b>	<b>Report</b>
Wallace	Charles F. Moser	<p>A KOMA complaint alleged that a majority of the members of the Wallace County Recreation Board had discussions regarding board business before and after properly noticed meetings, and that the board failed to provide notice of meetings to those who had requested notice. The county attorney met with the board to provide KOMA training and explain why their actions violated the KOMA. The complainant attended the training and was very satisfied with the resolution.</p> <p>No KORA complaints to report.</p>
Washington	Elizabeth Baskerville Hiltgen	No KOMA/KORA complaints to report
Wichita	Laura L. Lewis	No KOMA/KORA complaints to report
Wilson	John J. Gillett	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

## Enforcement Actions

The Attorney General's Office took the following enforcement action and its requirements were satisfied during the 2021 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>.

### **Lincoln County Commission**

2021-OG-0001

Consent Order Entered on January 7, 2021

Requirements Satisfied May 6, 2021

Kansas Open Meetings Act; Notice of Meetings

# Regulations

Regulations are available on the Attorney General's website at <https://ag.ks.gov/open-government>.

## Trainings Provided

<b>Date</b>	<b>Event</b>	<b>Location</b>	<b>Attendees</b>
11/12/2020	Chautauqua County Commission - KOMA Training	Virtual	5
11/20/2020	Douglas County District Court - KORA Training	Virtual	5
12/7/2020	New State Legislator Orientation - KOMA Training	Topeka	50
1/28/2021	Kansas State Treasurer's Office - KOMA/KORA Training	Virtual	8
2/10/2021	Kansas County Treasurer's Association Annual Meeting - KORA/KOMA Training	Virtual	100
3/10/2021	Flint Hills Area Transportation Agency - KOMA Training	Virtual	6
3/11/2021	Kansas Law Enforcement Training Center (KLETC) New Sheriff's School - KORA Training	Hutchinson	45
3/17/2021	City Clerks and Municipal Finance Officers Association Spring Conference - KORA/KOMA Training	Virtual	63
3/26/2021	Junior League of Topeka Advocacy Day - KORA/KOMA Training	Virtual	15
4/13/2021	Bourbon County Commission - KOMA Training	Virtual	10
5/5/2021	Kansas County Clerks and Election Officials Association (KCCEOA) Annual Conference - KORA/KOMA Training	Lenexa	75
6/4/2021	Topeka Bar Association CLE- KORA/KOMA Training	Virtual	20
6/14/2021	Labette County Commission - KOMA Training	Oswego	15

\*Note: The Office of the Attorney General did not conduct any trainings between March 12 and November 12, 2020, due to COVID-19.



**Open Government Enforcement Unit**

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