



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

**DEREK SCHMIDT**  
ATTORNEY GENERAL

December 14, 2017

MEMORIAL HALL  
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The Honorable Derek Schmidt  
Kansas Attorney General  
120 SW 10th Ave., 2nd Floor  
Topeka, KS 66612

Re: OPEN GOVERNMENT TRAINING ADVISORY GROUP

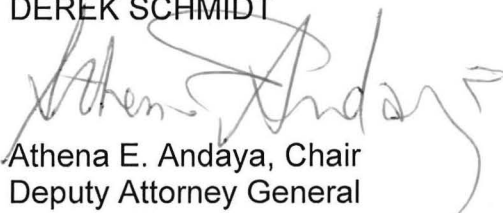
Dear General Schmidt:

The Open Government Training Advisory Group that you created almost one year ago has concluded its work for this year. I have enclosed the report approved by the Group for your perusal. We hope that you review with approval the four recommendations the Group has forwarded to you in this report.

If you have any questions, please do not hesitate to contact me.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL  
DEREK SCHMIDT

  
Athena E. Andaya, Chair  
Deputy Attorney General

AEA:sb  
Enclosure

**The Open Government Training Advisory Group  
Report to the Attorney General  
December 2017**

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

**2017 Open Government Training Advisory Group Membership**

**Office of the Attorney General**

Athena Andaya, Deputy Attorney General – Chair

Cheryl Whelan, Assistant Attorney General, Director of Open Government Training and Compliance – Vice Chair

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

**Kansas Association of Broadcasters**

Brian Gregory, News Director, KWCH12 (resigned September 29, 2017)

Kim Wilhelm, News Director, KWCH12 (appointed October 5, 2017)

**Kansas Press Association**

Sarah Kessinger, Publisher, Marysville Advocate

**Kansas Association of Counties**

Bill Kassebaum, Morris County Counselor

**League of Kansas Municipalities**

Nicole Proulx Aiken, City Attorney, City of Merriam

**Kansas Association of School Boards**

Deryl Wynn, Attorney

**Kansas County and District Attorneys Association**

Darrin Devinney, Butler County Attorney

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

**Kansas Department of Administration**

Philip Michael, Attorney, Office of the Chief Counsel

**At-Large**

Darin Beck, Associate Director, Kansas Law Enforcement Training Center

Ron Keefover, President, Kansas Sunshine Coalition for Open Government

Sharon Wolters, Smith County Clerk

## **COMMITTEE DISCUSSION**

The Advisory Group met four times: February 10, 2017; April 28, 2017; October 6, 2017; and December 1, 2017.

### **February 10, 2017**

The first meeting of the Kansas Attorney General's Open Government Training Advisory Group (Advisory Group) was conducted on February 10, 2017. The Advisory Group discussed open government computerized training and open government training approved by the Attorney General.

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

At that meeting, the Advisory Group established the Computerized Training Subcommittee with the following members: Cheryl Whelan, Chair, Office of the Kansas Attorney General; Nicole Proulx Aiken, League of Kansas Municipalities; Darin Beck, Kansas Law Enforcement Training Center; Darrin Devinney, Kansas County and District Attorneys Association; Brian Gregory, Kansas Association of Broadcasters; Shawn Minihan, Kansas County and District Attorneys Association; and Ron Keefover, Kansas Sunshine Coalition for Open Government.

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

#### **Approved Open Government Training**

The Advisory Group discussed a variety of issues associated with open government training approved by the Attorney General, including content of the training, learning objectives, accessibility of training materials, and whether to approve the trainer or the curriculum. The Advisory Group discussed whether open government training approved by the Attorney General is needed if open government computerized training is available, and recommended focusing on computerized training at this time.

### **April 28, 2017**

The second meeting of the Advisory Group was conducted on April 28, 2017. The Advisory Group had a briefing on pending legislation, received a report from the Computerized Training Subcommittee, discussed currently available open government resources, and discussed open government training approved by the Attorney General.

#### **Pending Legislation**

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

- 2017 Senate Bill No. 86, as amended by the Senate Committee of the Whole, would have amended the Kansas Open Records Act (KORA). The amendments, among other things, would have established enumerated fees for public records and copies for citizens of Kansas. It also would have established who may request public records in Kansas, and it required minutes be kept of each open meeting and prescribe the format of such minutes. Finally, the bill would have excluded certain criminal investigation records from the exemption for criminal investigation records in the KORA.
- 2017 Senate Bill No. 92, as amended by the Senate Committee, would have required all Kansas law enforcement agencies to adopt a detailed written policy concerning the electronic recording of custodial interrogations of homicide or felony sex offenses no later than July 1, 2018. The recording would have been exempt from disclosure under the KORA.
- 2017 House Bill 2070, as further amended by the House Committee, would have amended the section of the Kansas Law Enforcement Training Act related to the central registry of Kansas police officers and law enforcement officers to provide that the registry and termination reports to the registry shall be considered personnel records and not required to be disclosed under the KORA.
- 2017 House Bill No. 2128, as amended by the Senate Committee of the Whole, would have amended the KORA to require motions to recess for closed or executive sessions to include a the subjects to be discussed and the justification for closing the meeting. Justifications for closing the meeting are enumerated in the bill. The bill would require the complete motion to be recorded in the minutes of the meeting.
- 2017 House Bill No. 2301, as amended by the Senate Committee on Judiciary, among other things, would have continued certain KORA exceptions and removed the sunset date of July 1, 2021 on enumerated exceptions.

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

The subcommittee met in person on March 2, 2017, and by telephone conference call on April 26, 2017.

The subcommittee reviewed open government computerized training offered by the Ohio Attorney General and the Washington Attorney General. The subcommittee preferred the Ohio Attorney General model because that training utilized informational videos ranging from four to 15 minutes in length, depending on the intended audience and topic.

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

The videos directed to the general public would consist of a broad overview of the KOMA and the KORA such as a video entitled Public Records 101. These videos could be utilized by all audiences to establish a basic knowledge of the KOMA and the KORA.

The videos directed to members of governing bodies would focus on the KOMA with two additional content areas. One content area is managing a meeting, drafting an agenda, and requirements for minutes. The other content area is videos that could be utilized for remedial training if a public body was found to be in violation of the KOMA.

The videos directed to public employees would focus on different types of records. The subcommittee discussed videos addressing records commonly possessed by public agencies, records possessed by law enforcement, and court records.

The subcommittee also discussed developing KOMA and KORA training for which attorneys could receive continuing legal education credit (CLE). The subcommittee believes that providing convenient, on-demand CLE opportunities for attorneys who advise clients on the KOMA and the KORA would be beneficial.

The subcommittee also discussed issues such as providing a certificate of completion for specific videos, a "test your knowledge" component embedded in each video, and tracking versus verification of completion. For example, if a public body must complete remedial training, how will the completion of that training be tracked and should a test be included at the end of each video to ensure that the individual understands the training.

The subcommittee decided to develop one video to show the Advisory Group. The subcommittee decided on a Public Records 101 video. Two members of the subcommittee are working on a draft script for the video. Once the draft is completed, the subcommittee will hold a public meeting to review the draft and proceed with completing the video.

### **Inventory of open government resources**

Each member of the Advisory Group was asked to determine useful open government resources possessed by the organizations they represent that those organizations may be willing to share. Advisory Group Chair Andaya then would compile a list of those resources. The Advisory Group discussed developing the following open government materials to post on the Kansas Attorney General's website: Kansas Attorney General Opinions with a synopsis; list of cases; and the Kansas Legislature's Briefing Book. The Advisory Group also recommended providing an easier to print online copy of A Citizen's Guide to KOMA-KORA.

### **Discussion of open government training approved by the Attorney General**

The Advisory Group again discussed whether open government training approved by the Attorney General is needed with the development of computerized training. The Advisory Group ultimately determined the Advisory Group should not have a role in recommending

approval of open government training by the Attorney General. The Advisory Group recommends that if the Attorney General, a district attorney or a county attorney determine that the KOMA or the KORA have been violated in a specific case, then the Attorney General, district attorney or county attorney should approve any required remedial open government training for that specific violation.

### **July 28, 2017**

This scheduled meeting was canceled because the Computerized Training Subcommittee needed additional time to work on its recommendations.

### **October 6, 2017**

The third meeting of the Advisory Group for 2017 was conducted on October 6, 2017. The Advisory Group discussed the open government training conducted by the Attorney General in conjunction with the Kansas Sunshine Coalition for Open Government, executive sessions, and the report from the Computerized Training Subcommittee. The Advisory Group also discussed whether to create a report to provide the Attorney General with recommendations developed by the Advisory Group.

#### **Open Government Training**

The Office of the Attorney General and the Sunshine Coalition for Open Government offered free training sessions on Kansas open government laws in five locations across the state. Training sessions were held in September in Leavenworth, Manhattan, Hays and El Dorado. An additional training session was held in Topeka in early October. Several members of the Advisory Group volunteered their time to participate as panel members. Almost 200 individuals attended these training sessions.

#### **Executive Sessions**

The Office of the Attorney General received three requests for opinions on 2017 legislative amendments to K.S.A. 2016 Supp. 75-4319. The first opinion request asked whether an elected body, subject to the Kansas Open Meetings Act (KOMA), may enter into executive session to discuss more than one topic if the subjects are properly identified by a motion that is correctly recorded in the minutes.

The second opinion request asked three different questions. First, whether a public body subject to the KOMA may enter an executive session and discuss more than one justification if the justifications are properly identified by a motion that complies with the KOMA. Second, when entering an executive session whether a public body may record in the minutes the elements of the motion listed in the statute or whether the entirety of the motion must be recorded in the minutes. Third, when a public body makes a motion to go into executive session, may the public body summarily list the subjects to be discussed or is additional detail required. If additional detail is required, how much detail is enough to comply with the requirements of the KOMA.

The third opinion request asks the different between the terms “recess” and “adjourn.” Specifically, may a public body recess into an executive or closed meeting to another time and place, and if yes, whether a public body may conduct more than one executive or closed meeting during that recess.

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

The Computerized Training Subcommittee summarized its report provided earlier in this document. Two members of the subcommittee continue to work on a draft script for the Public Records 101 video. Once the draft is completed, the subcommittee will hold a public meeting to review the draft and proceed with completing the video.

### **December 1, 2017**

The fourth and final meeting for the Advisory Group was conducted on December 1, 2017, by conference call. The Advisory Group reviewed and approved the Open Government Training Advisory Group report to the Attorney General.

### **RECOMMENDATIONS**

The Advisory Group developed four recommendations.

1. Continue the Open Government Training Advisory Group which was established on December 7, 2016.
2. Develop computerized training. The Advisory Group recommends continuing the development of a series of short informational videos directed to the following audiences: the general public; members of governing bodies; public employees; and attorneys. These videos would be housed on the Kansas Attorney General Website, and the webpage would include a separate introductory video by the Kansas Attorney General. The subcommittee intends that all videos be available to all audiences although specific videos would provide more detailed information that may be of interest to specific audiences.
3. Open government training approved by the Attorney General is not recommended at this time because of the recommendation to focus on developing computerized training.
4. Develop an inventory of open government resources to be housed on the Office of the Attorney General website. Recommendations of specific materials to be housed include: Kansas Attorney General Opinions with a synopsis; list of cases; the Kansas Legislature’s Briefing Book; and an easier-to-print online copy of A Citizen’s Guide to KOMA-KORA.