

**The Open Government Training Advisory Group
Report to the Attorney General
December 2018**

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.

2018 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

Kim Wilhelm, News Director, KWCH12

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

Tracy Hannah, U.S.D. #458 (Basehor-Linwood) Board Member

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, Director, Kansas Law Enforcement Training Center

Ron Keefover, President, Kansas Sunshine Coalition for Open Government

Sharon Wolters, Smith County Clerk

ADVISORY GROUP DISCUSSION

The Advisory Group met five times: February 16, 2018; April 20, 2018; July 20, 2018; October 19, 2018; and December 12, 2018.

February 16, 2018

The first meeting of the Kansas Attorney General's Open Government Training Advisory Group (Advisory Group) for 2018 was conducted on February 16, 2018. The Advisory Group discussed the 2017 Annual Report submitted to the Attorney General, open government computerized training, pending legislation, Attorney General Opinions regarding closed or executive meetings, and Executive Orders issued by Governor Colyer.

2017 Annual Report Review

The 2017 Open Government Training Advisory Group Annual Report was submitted to General Schmidt on December 14, 2017. General Schmidt approved the Advisory Group's recommendations.

Open Government Computerized Training

The Advisory Group continued 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; Kim Wilhelm, 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).

The subcommittee met on February 13, 2018, and reviewed a draft PowerPoint presentation for its first informational video on the KORA entitled Public Records 101. Kim Wilhelm will produce a draft video for the subcommittee's review.

Pending Legislation

The Advisory Group received a briefing on pending legislation from Cheryl Whelan. Whelan reviewed the following bills:

- 2018 Senate Bill 360 would have amended the Kansas Open Records Act (KORA). The bill would have required a public agency to make copies of radio recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar

audio or visual items if duplication equipment is available. Finally, the bill would have regulated access to certain law enforcement audio and video recordings.

- 2018 Senate Bill 361 would have amended the KORA by requiring law enforcement agencies to disclose audio and video from body cameras and vehicle cameras to certain individuals within a specific time period.
- 2018 Senate Bill 418 would have amended the KORA to create an exception to the use of names and addresses derived from public records of the secretary of state office regarding secured transactions.
- 2018 House Bill 2571 would have amended the KORA. The amendments would have prohibited a public agency from requiring a written request for copies of public records. The bill would have required a public agency to make copies of radio recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items if duplication equipment is available. The amendments would have regulated access to certain law enforcement audio and video recordings.
- 2018 House Bill 2572 would have amended the KORA. The amendments would have required public disclosure of certain economic incentive data.
- 2018 House Bill 2573 would have amended the KORA. The amendments would have provided for the study and investigation of maternal deaths by the Secretary of Health and Environment, and provide access to and confidentiality of records related to maternal death.
- 2018 House Bill 2598 would have amended the KORA to create an exception to the use of names and addresses derived from public records of the secretary of state office regarding secured transactions.
- 2018 House Bill 2625 would have amended the KORA by establishing confidentiality of records contained in the central registry of all Kansas police officers and law enforcement officers.
- 2018 House Bill 2700 would have amended K.S.A. 2017 Supp. 75-3520 to require redaction of social security numbers in documents available for public inspection and copying.
- 2018 House Bill 2728 would have amended the revised Kansas code for care of children to allow the release of some information after the fatality of a child in need of care caused by abuse or neglect.

Attorney General Opinions Regarding Closed or Executive Meetings

The Advisory Group received a briefing on Attorney General Opinions from Cheryl Whelan. Whelan reviewed the following opinions:

- Attorney General Opinion No. 2017-20 defined the terms “recess” and “adjourn” as used in the Kansas Open Meetings Act. The General also opined that a public body or agency may only recess an open meeting to enter into a closed or executive meeting if that meeting occurs contemporaneously with the open meeting.

- Attorney General Opinion No. 2018-01 addressed 2017 statutory amendments to the Kansas Open Meetings Act regarding the motions to enter into a closed or executive meeting.

Executive Orders

The Advisory Group received a briefing on executive orders from Cheryl Whelan. Whelan reviewed the following executive orders:

- Executive Order 18-05. This order states that the Office of the Governor and all Executive Branch departments, agencies, boards, and commissions under the jurisdiction of the Office of the Governor would provide the first 100 pages of records free to residents of Kansas who made a Kansas Open Records Act request.
- Executive Order 18-06. This order states that all officers and employees in the Office of the Governor shall execute the “Policy Regarding Use of Private E-mail Accounts.”
- Executive Order 18-08. This order directed the Kansas Department of Administration to create and manage a Kansas public notice website for the posting of open meeting notices and meeting minutes. The order applies to all Executive Branch departments, agencies, boards, and commissions under the jurisdiction of the Office of the Governor.

April 20, 2018

The second meeting of the Advisory Group for 2018 was conducted on April 20, 2018. The Advisory Group received a report from the Computerized Training Subcommittee, had a briefing on pending legislation, and had an update on Executive Order 2018-8, on approved recommendations of the Advisory Group, and an overview of enforcement.

Report from the Computerized Training Subcommittee

The subcommittee met on April 12, 2018. The subcommittee reviewed the draft script for Public Records 101, which is the first video in a series of information videos about the KORA. The subcommittee recommended modifications to the script. Once those modifications are made, Kim Wilhelm will work on a draft video.

Pending Legislation

The Advisory Group received a briefing on pending legislation from Cheryl Whelan. Whelan reviewed the following bills:

- 2018 Senate Bill 360 would have amended the Kansas Open Records Act (KORA). The bill would have required a public agency to make copies of radio recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar

audio or visual items if duplication equipment is available. Finally, the bill would have regulated access to certain law enforcement audio and video recordings.

- 2018 Senate Bill 361 would have amended the KORA by requiring law enforcement agencies to disclose audio and video from body cameras and vehicle cameras to certain individuals within a specific time period.
- 2018 Senate Bill 418 would have amended the KORA to create an exception to the use of names and addresses derived from public records of the secretary of state office regarding secured transactions.
- 2018 House Bill 2571 would have amended the KORA. The amendments would have prohibited a public agency from requiring a written request for copies of public records. The bill would have required a public agency to make copies of radio recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items if duplication equipment is available. The amendments would have regulated access to certain law enforcement audio and video recordings.
- 2018 House Bill 2572 would have amended the KORA. The amendments would have required public disclosure of certain economic incentive data.
- 2018 House Bill 2573 would have amended the KORA. The amendments would have provided for the study and investigation of maternal deaths by the Secretary of Health and Environment, and provide access to and confidentiality of records related to maternal death.
- 2018 House Bill 2598 would have amended the KORA to create an exception to the use of names and addresses derived from public records of the secretary of state office regarding secured transactions.
- 2018 House Bill 2625 would have amended the KORA by establishing confidentiality of records contained in the central registry of all Kansas police officers and law enforcement officers.
- 2018 House Bill 2700 would have amended K.S.A. 2017 Supp. 75-3520 to require redaction of social security numbers in documents available for public inspection and copying.
- House Substitute for Senate Bill 336 would have amended the law regarding disclosure of information under the Revised Kansas code for care of children and would continue or eliminate exceptions to the KORA.

Executive Orders

The Advisory Group received an update on Executive Order 18-08 from Philip Michael, Attorney, Office of the Chief Counsel, Department of Administration.

- Executive Order 18-08. This order directed the Kansas Department of Administration to create and manage a Kansas public notice website for the posting of open meeting notices and meeting minutes. The order applies to all Executive Branch departments, agencies, boards, and commissions under the jurisdiction of the Office of the Governor.

Approved Recommendations

Advisory Group Chair Andaya provided an update on the Advisory Group's recommendations to develop an inventory of open government resources to be housed on the Office of the Attorney General website. A summer law clerk will be assigned the task of compiling Kansas Attorney General Opinions with a synopsis. Chair Andaya requested clarification on whether the list of cases was appellate or district court cases. The Advisory Group suggested a list of appellate cases. Chair Andaya is contacting the Director of Legislative Research to obtain permission to provide a link to the Kansas Legislature's Briefing Book. Finally, work on developing an easier-to-print online copy of A Citizens' Guide to KOMA-KORA is ongoing.

Overview of Enforcement

Lisa Mendoza [sib1] provided an overview of open government enforcement. The open government enforcement unit has closed 132 cases during this fiscal year. The Office of the Attorney General website includes copies of consent orders entered into by Attorney General Schmidt with public bodies and public agencies.

July 20, 2018

The third meeting of the Advisory Group for 2018 was conducted on July 20, 2018. The Advisory Group received a report from the Computerized Training Subcommittee, a briefing on the Judicial Council Study affecting open government, an update on upcoming open government training, and an update on the approved recommendations of the Advisory Group.

Report from the Computerized Training Subcommittee

The subcommittee met on July 9, 2018. The subcommittee reviewed the draft video for Public Records 101, which is the first video in a series of informational videos about the KORA. The subcommittee recommended presenting the draft video to the Advisory Group.

The subcommittee also discussed potential topics for videos, and decided to focus on producing KORA videos before working on KOMA videos. The subcommittee decided to focus on the following topics for future videos:

- Public agency responsibilities
- Information versus records
- Costs/payment and three business days
- Personal privacy
- Security and safety
- Internal communications

Members of the subcommittee are drafting scripts for the subcommittee's review.

Judicial Council Study

The Advisory Group received a briefing on a Judicial Council Study from Cheryl Whelan. Representative Blaine Finch requested that the Kansas Judicial Council study access to audio or video recordings made and retained by law enforcement using a body camera or vehicle camera. The 2018 Legislature considered several bills that would have made extensive changes to the KORA, including criminal investigation records. The Kansas Judicial Council assigned the Criminal Law Advisory Committee to study the issues raised by Representative Finch's request. The meeting dates are August 3, 2018, September 7, 2018, and November 2, 2018. The meeting locations are the Judicial Center and the meetings begin at 9:30 a.m. All meetings are open to the public.

Open Government Training

The Advisory Group received an update on training planned by the Office of the Attorney General and the Kansas Sunshine Coalition for Open Government from Cheryl Whelan and Ron Keefover. Training on both the KOMA and the KORA is planned for the following dates and times:

- August 21 – Colby – Training is from 1:30 to 4:30.
- August 22 – Garden City – Training is from 9:00 to noon.
- August 23 – Wichita – Training is from 9:00 to noon.
- August 24 – Fredonia -- Training is from 1:30 to 4:30.
- October – Topeka and Kansas City Area TBA

Approved Recommendations

Athena Andaya provided an update on the Advisory Group's recommendations on developing an inventory of open government resources to be housed on the Office of the Attorney General website.

October 19, 2018

The fourth meeting of the Advisory Group for 2018 was conducted on October 19, 2018. The Advisory Group received a report from the Computerized Training Subcommittee, an update on the Judicial Council study, an update on open government resources, and an update on open government training.

Report from the Computerized Training Subcommittee

The Computerized Training Subcommittee continues to draft scripts for the KORA videos. The subcommittee presented its draft KORA 101 video. The Advisory Group provided some recommended changes, which will be incorporated into the video for the Advisory Group's review.

Judicial Council Study

The Advisory Group received a briefing on a Judicial Council Study from AAG Cheryl Whelan. The Criminal Law Subcommittee met on August 3, 2018, and September 7, 2018. Representative Blaine Finch requested that the Kansas Judicial Council study access to audio or video recordings made and retained by law enforcement using a body camera or vehicle camera.

The Criminal Law Subcommittee discussed the issues with distinguishing between an active investigation and an inactive investigation in the proposed definitions. One concern was that the proposed definitions eliminated "public interest" as part of the standard of review. The subcommittee felt it was important to add a definition of public interest to criminal investigation records in K.S.A. 2018 Supp. 45-221(a)(10) without changing the current statute and years of decisions. The current definition was established by *Harris v. Moore*, 241 Kan. 59, ¶¶ 2-4 (1987).

The Subcommittee also discussed K.S.A. 2018 Supp. 45-254 (law enforcement recordings using body camera or vehicle camera). The Subcommittee was concerned that a victim or a victim's family has no role in the decision making process on whether to release audio or video to the public. Additionally, the Subcommittee discussed transferring K.S.A. 2018 Supp. 45-254 out of the KORA to Chapter 22, which governs criminal procedure.

Approved Recommendations

Advisory Group Chair Andaya provided an update on the Advisory Group's recommendations on developing an inventory of open government resources to be housed on the Office of the Attorney General website. The Director of Legislative Research granted permission to provide a link to the Kansas Legislature's Briefing Book. An easy-to-print online copy of A Citizens' Guide to KOMA-KORA has been placed on the Office of the Attorney General's website. Work continues on developing a list of Kansas Attorney General Opinions with a synopsis and appellate cases addressing the KOMA and the KORA.

The Advisory Group discussed working with the Kansas Association of Counties to provide resources on how to run a meeting. The Advisory Group also discussed working with 4H on teaching children how to run a meeting.

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 four locations across the state. Training sessions scheduled for Colby and Garden City were cancelled due to lack of interest. Training sessions were held in August in Wichita and Fredonia. Additional training sessions were held in Shawnee and Topeka in October. Several members of the Advisory Group volunteered their time to participate as panel members. Almost 150 individuals attended these training sessions.

The Advisory Group discussed the declining attendance at the training sessions. The Group liked the increased use of examples during the training sessions and audience participation. The Advisory Group discussed the timing of the training sessions, which are during the day. The suggestion was made that scheduling training sessions during the evening may increase attendance. Another suggestion was to use technology such as Facebook to make it convenient for those who cannot attend the training sessions in person to attend through Facebook. A moderator could look at questions provided through Facebook and then present the questions to the panel.

December 12, 2018

The fifth and final meeting for the Advisory Group was conducted on December 12, 2018. The Advisory Group received a report from the Computerized Training Subcommittee, an update on the Judicial Council study, and an update on open government resources. The Advisory Group discussed and approved the 2018 Open Government Training Advisory Group report to the Attorney General.

RECOMMENDATIONS

The Advisory Group developed three recommendations:

1. Continue the Open Government Training Advisory Group, which was established on December 7, 2016.
2. Continue to 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. Continue to 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 and list of appellate cases that include KOMA-KORA-related issues.