



KANSAS ATTORNEY GENERAL
DEREK SCHMIDT

A GUIDE TO OPEN MEETINGS AND OPEN RECORDS

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Kansas Open Records Act

K.S.A. 45-215 *et seq.*

**See disclaimer



Policy, construction, purpose

- ▶ “Public records shall be open for inspection by any person unless otherwise provided, and this act shall be liberally construed and applied to promote such policy” - K.S.A. 45-216(a)
- ▶ KORA enacted in 1984; it replaced version enacted in 1957
- ▶ KORA provides the procedure for the public to view and make copies of public records
- ▶ KORA also defines and categorizes records



Public record defined

- ▶ Any recorded information, regardless of form, characteristics or location, which is made, maintained or kept by or is in the possession of:
 - Any public agency
 - Any officer or employee of a public agency pursuant to the officer's or employee's official duties and which is related to the functions, activities, programs or operations of any public agency
- ▶ Includes written records, photographs, computer data, and email

K.S.A. 45-217(l)



Public record defined

▶ Does not include:

- ▶ Records which are owned by a private person or entity and are not related to functions, activities, programs or operations funded by public funds
 - ▶ Private person - does not include an officer or employee of a public agency who is acting pursuant to the officer's or employee's official duties
- ▶ Records made, maintained or kept by an individual who is a member of the legislature or of the governing body of any political or taxing subdivision of the state
- ▶ Records not in existence at time of request
 - ▶ Do not need to create records in order to fulfill a request

K.S.A. 45-217(l)

**See disclaimer



What is a “public agency?”

- ▶ The state
- ▶ Any political or taxing subdivision of the state, or any office, agency or instrumentality thereof, or
- ▶ Any other entity receiving or expending or supported in whole or in part by public funds appropriated by the state or political/taxing subdivision
- ▶ Instrumentality - not defined in KORA; if created by a covered entity or the group has become an extension of a covered entity, most likely covered

K.S.A. 45-217(k)(1)



What is not a “public agency?”

- ▶ Private companies, even if they receive public funds in exchange for goods and services

- ▶ Municipal or state judge/justice

K.S.A. 45-217(k)(2)



KORA requirements for public agencies

- ▶ KORA is, in part, a procedural statute
- ▶ Appoint a Freedom of Information officer to assist with KORA requests
- ▶ Display, distribute or otherwise make available a brochure describing requester rights, public agency responsibilities and procedures for inspecting or obtaining copies of public records
- ▶ Include the name/title of records custodian, fees and office hours available for anyone to make a request

K.S.A. 45-226 and K.S.A. 45-227

**See disclaimer



Who may make a request?

- ▶ Any person may make a request
- ▶ The person need not be a resident
 - *But see McBurney v. Young*, US Sup. Ct., April 2013 (Not a violation of privileges and immunities clause to limit access to public records to citizens of Commonwealth of Virginia)
- ▶ The person need not provide a reason for their request



Form of the request

The public agency may require:

- ▶ The request to be in writing
- ▶ Only the requester's name and address
- ▶ Proof of identification
- ▶ Written certification that the requester will not use names and addresses obtained from the records to solicit sales or services

**See disclaimer



Rights of the requester

- ▶ Unless closed by law, the public has the right to review all public records
- ▶ Any person may make abstracts or request copies of records
- ▶ If copies cannot be made where the record is located, arrangements must be made to allow copying
- ▶ If portions of a record are closed, the remainder must be made available to the requester



Limitations on requester's rights

- ▶ Requester may not remove a public record without the written consent of the custodian
- ▶ Public agency not required to make copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations unless shown at a public meeting
- ▶ Copyrighted materials may not be reproduced without the permission from the copyright holder, but must be available for viewing or listening.



Responding to the request

- ▶ The request must be “acted upon” as soon as possible, but not later than the end of the 3rd business day following date request is received - K.S.A. 45-218(d)
- ▶ The three acceptable responses:
 1. The record is provided (in the form requested, if possible)
 2. The request is under review and the records, if permitted, will follow
 3. The request is denied, with a detailed explanation for the denial

Telegram Publishing Co., Inc. v. Kansas Department of Transportation, 275 Kan. 779, ¶ 4 (2003)



Allowable fees and charges

- ▶ Public agency may only recover actual costs to provide the requested records
- ▶ These costs include staff time to retrieve, review and redact information from a record
- ▶ Fees may be estimated and collected before the records are provided

K.S.A. 45-218(f) and K.S.A. 45-219

- ▶ **Executive Order 18-05**

**See disclaimer



Penalties

- ▶ Civil penalty up to \$500 for each violation
- ▶ Require completion of AG approved training
- ▶ Order to cease and desist from further violation
- ▶ Comply with the KORA
- ▶ Reasonable expenses, investigative costs and attorney fees

**See disclaimer



Categorizing records

- ▶ Presumption of openness
- ▶ Requested public records must be released unless an exemption to disclosure applies
- ▶ Burden rests on public agency to prove the requested records are exempt from disclosure
- ▶ Exemptions to disclosure - discretionary or mandatory closure



Mandatory closure of records

- ▶ There are records that are required to be closed by federal or state statute that are not found in KORA
- ▶ KORA will look to other statutes first - K.S.A. 45-221(a)(1)
- ▶ Records custodian must be familiar with those records and what must be separated into the open and closed portions of a record



Discretionary/Policy reasons records may be closed

- ▶ Personal privacy
- ▶ Safety/security
- ▶ Internal communications while policies are developed or administrative procedures are underway

K.S.A. 45-221(a)



Redaction

- ▶ If a record contains material that is not subject to disclosure, the agency “shall separate or delete such material” and make the remainder of the record available

 - ▶ A public agency may charge for staff time to redact records
- K.S.A. 45-221(d)



Kansas Open Meetings Act

K.S.A. 75-4317 *et seq.*

**See disclaimer



History of open meetings

- ▶ K.S.A. 19-218 - Every board of county commissioners “shall sit with open doors, and all persons conducting in an orderly manner may attend their meetings. . . .”
- ▶ First adopted in 1868; last amended in 1923
- ▶ KOMA adopted in 1972; provides rules that allow members of the public to observe the nearly 4,000 units of government in Kansas making decisions



Policy, construction, purpose

- ▶ K.S.A. 75-4317(a) - Meetings shall be open to the public because “a representative government is dependent upon an informed electorate. . . .”
- ▶ Law enacted for the “public benefit,” so construed broadly in favor of the public to give effect to its specific purpose of openness. *State ex rel. Murray v. Palmgren*, 231 Kan. 524, Syl. ¶ 4 (1982)
- ▶ KOMA interpreted liberally and exceptions applied narrowly to carry out purpose



Who is subject to KOMA?

- ▶ All legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, and other subordinate groups thereof receiving or expending and supported in whole or in part by public funds

K.S.A. 75-4318(a)

- ▶ “Subordinate groups” - not defined; if created by a covered entity or the group has become an extension of a covered entity, most likely covered



Who is subject to KOMA?

- ▶ State bodies
 - State Legislature, its committees and subcommittees unless the rules state otherwise
 - State administrative bodies, boards and commissions
 - State Board of Regents
 - Supreme Court nominating commission
- ▶ Local Governments
 - Cities, counties and townships
 - School districts
 - Fire districts
 - District judicial nominating commission

**See disclaimer



Who is not subject to KOMA?

- ▶ Any administrative body when exercising a “quasi-judicial” function - K.S.A. 75-4318(g)(1)
- ▶ Hearings conducted under the Kansas Administrative Procedures Act (KAPA) - K.S.A. 77-523(f); K.S.A. 75-4318(g)
- ▶ Judiciary
- ▶ Private organizations
- ▶ Staff meetings of a covered entity

**See disclaimer



What is a meeting?

- ▶ Any gathering or assembly in person, through the use of a telephone, or any other medium for interactive communication
- ▶ By a majority of the membership of a public body or agency subject to the act
- ▶ For the purpose of discussing the business or affairs of the public body or agency

K.S.A. 75-4317a

**See disclaimer



Gathering or assembly

- ▶ May conduct meetings by telephone or other medium (conference call, video, skype, go to meeting, WebEx) if comply with all KOMA requirements
 - A physical location is required for members of the public to view or observe the meeting even if conducted virtually
- ▶ Informal discussions before, after or during a recess of a public meeting may be subject to the KOMA
- ▶ Name of the gathering is irrelevant



Majority of the membership

- ▶ Next whole number greater than one-half the total number of members

- ▶ Can be different than a quorum

**See disclaimer



Discussion

- ▶ Binding action or voting not necessary
- ▶ Meeting includes all gatherings at all stages of the decision making process
- ▶ Social gatherings
- ▶ Retreats and meetings held in private
- ▶ Educational conference/seminar
 - Tip - when traveling to such meetings, advise members of public body to avoid discussing business or affairs

**See disclaimer



“Serial communications”

- ▶ Interactive communications outside of a noticed meeting may be a meeting under KOMA if:
 - Collectively involve a **majority of the membership** of the public body or agency
 - Share a **common topic** of discussion
 - Are **intended** by any or all participants **to reach an agreement on a matter that requires binding action** to be taken by the public body or agency

K.S.A. 75-4318(f)

- ▶ Emails, calling trees, use of an agent (staff member)
 - Tip - **DO NOT REPLY ALL, DO NOT FORWARD**

**See disclaimer



Notice

- ▶ KOMA does not require notice of meetings to be published in a newspaper or on a website
- ▶ Must request notice of meetings
- ▶ No formalities to requesting notice - can be verbal or written
- ▶ A request is valid for one fiscal year
- ▶ Must notify of expiration before terminating notice
- ▶ Presiding officer has duty to provide notice, but duty may be delegated
- ▶ Provide date/time/location where public body will meet to person requesting notice a “reasonable time” before meeting
- ▶ Group request for notice - provide to designated individual

K.S.A. 75-4318(b)





Kansas Public Square



[Home](#) [About](#) [Calendars](#) [Glossary](#) [Open Meetings Act \(FAQ\)](#)

Daily Meetings

Board of Tax Appeals (BOTA) - Regular Division Hearings

Location: Topeka - Kansas

Next occurrence is: 27 October, 2020 at 9:00AM

Upcoming Meetings

BSRB Board Meeting

Day: 10/27/2020

Start Time: 9:00am

KCC Business Meeting Notice, Tues., Oct. 27, 2020

Location: Topeka - KS

Day: 10/27/2020

Start Time: 10:00am

Kansas Governmental Ethics Commission

We, the people of Kansas...



"All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit."

Section II, Kansas Constitution

Current/Recurring

Board of Tax Appeals (BOTA) - Regular Division Hearings

Location: Topeka - Kansas

Next occurrence is: 27 October, 2020 at 9:00AM

****See disclaimer**

<https://publicsquare.ks.gov/home>

Meeting conduct

- ▶ KOMA does not address meeting procedures
- ▶ Agenda
 - Not required to create
 - Any agenda must include topics planned for discussion (if known) but may be amended during a meeting unless a statute or rule prohibits an amendment
 - Must make agenda available to any person requesting the agenda
 - Agenda does not have to be mailed out in advance of meeting
 - may simply place the agenda in a public place
- ▶ K.A.R. 16-20-1

**See disclaimer



Meeting conduct

- ▶ Use of cameras, photographic lights and recording devices
 - Public may record meeting as long as not disruptive
 - Use subject to reasonable rules to ensure orderly conduct of the meeting
- ▶ No public right to speak, but only to listen and observe
- ▶ Location of meeting - is it accessible to the public?
- ▶ No secret ballots
- ▶ Minutes - only required to record motion to go into executive session, but bylaws, ordinances, policies, etc., may require minutes to be kept



Penalties

- ▶ Civil penalty up to \$500 for each violation paid by each individual member of the public body who knowingly violates
- ▶ Require completion of AG approved training
- ▶ Order to cease and desist from further violation
- ▶ Comply with the KOMA
- ▶ Reasonable expenses, investigative costs and attorney fees

**See disclaimer



Executive sessions

- ▶ Permits discussion of certain enumerated matters outside of public view
- ▶ An open meeting must be convened first and then **recess** into executive session
- ▶ The KOMA does not allow an executive session to be extended or ended early
- ▶ No binding actions may be taken in an executive session, but a consensus is allowed
- ▶ If a consensus is achieved, an open and formal vote must be taken in open session



Executive sessions

- ▶ Must be a formal motion seconded and carried; Complete motion recorded in the minutes
- ▶ Each executive session requires a complete motion recorded in the minutes
- ▶ Parts of the motion for executive session:
 - Statement of the subject(s) to be discussed (without revealing confidential information)
 - Justification (from the statute)
 - Time/place open meeting will resume

K.S.A. 75-4319



Who may attend?

- ▶ Only members of the public body
- ▶ Mere observers may not attend
- ▶ Staff, agents or other non-public body individuals have no right to attend
- ▶ Public body may invite individuals who will:
 - Aid the discussion
 - Provide information on a permissible topic or participate in the discussion



Executive sessions

Commonly used justifications:

- ▶ Personnel matters of non-elected personnel
- ▶ Consultation with the public body's attorney
- ▶ Employer - Employee negotiations
- ▶ Data relating to the financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorship (economic development)
- ▶ Matters affecting a student, patient or resident of a public institution
- ▶ Preliminary discussions relating to the acquisition of real property
- ▶ Security measures

K.S.A. 75-4319

**See disclaimer





ATTORNEY GENERAL

DEREK SCHMIDT

- Home
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- Fraud & Abuse
- Victim Services
- Open Government**
- Licensing Programs
- File a Complaint
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U.S. Supreme Court agrees to hear Kansas appeal in identity theft cases

The U.S. Supreme Court has agreed to hear an appeal by the State of Kansas which is seeking to overturn a state supreme court decision that would prevent Kansas from fully enforcing state identity theft and related criminal statutes.

[LEARN MORE →](#)

Latest News

- [AG Derek Schmidt to provide human trafficking awareness training for hospitality, travel and tourism industry next week](#)
April 22, 2019
- [AG Derek Schmidt: Kansas receives \\$55.9 million payment from tobacco settlement](#)
April 19, 2019
- [AG Derek Schmidt: 379 crime victims to receive support](#)

Upcoming Events

- [Training: Domestic Violence and Strangulation Cases](#)
Smith Center | April 23, 1:00 PM
- [Training: Domestic Violence and Strangulation Cases](#)
Goodland | April 24, 1:00 PM
- [National Prescription Drug Take-Back Day](#)
April 27, 10:00 AM
- [Human Trafficking Awareness Training for](#)

Quick Links

- [Concealed Carry](#)
- [Consumer Protection](#)
- [Gang Free Kansas](#)
- [Human Trafficking](#)

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Thank you!

Additional resources:

<http://ag.ks.gov/>

<http://ag.ks.gov/open-government/resources>

<http://ag.ks.gov/media-center/ag-opinions>

<http://ksag.washburnlaw.edu/>

(Attorney General Opinions)

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