

### III. How public bodies must respond

Records must be available for inspection, at the very least, during regular office hours on business days (KSA 45-218b). On business days, when a public agency does not maintain regular office hours, it should establish reasonable hours when public records may be inspected. If you wish to look at records during times outside usual office hours, you may be required to notify the agency in advance. The agency may not require the notice be written or require more than 24 hours in advance.

Requests for records must be answered as soon as possible, but no later than the end of the third business day following the request. If the request is not immediately granted, the custodian must give a detailed explanation of the reasons for the delay, and the earliest time and place the requested record will be released (KSA 45-218d).

If the request is denied, the custodian must, on request, provide the reason for refusal in writing, including the specific provision of law under which the request was refused. The reason must be furnished no later than the end of the third business day after it is requested (KSA 45-218a).

Requests may not be denied on a technicality unless it is impossible to identify the records being sought. Custodians may refuse a request if it is unreasonably burdensome, and may refuse repeated requests if they are intended to disrupt the agency's other functions. Refusal under this subsection must be sustained by preponderance of evidence (KSA-45-218e).

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If the record sought contains portions that are properly closed, the custodian is required to release the record after deleting the closed portion or portions (KSA 45-221d).

### IV. Fees, copies, etc.

Any person may obtain copies of accessible records; however, the public agency may charge a fee, require advance payment and require a written request for providing access to the record (KSA 45-219a), or for providing copies of the records (KSA 45-218f and KSA 45-219). Copying must be done under the supervision of the custodian and, when practical, in the place where the records are kept. If impractical, the custodian must allow other arrangements (KSA 45-219b).

The fee for providing copies may not exceed the actual cost of furnishing copies, but can include the cost of staff time (KSA 45-219c).

An agency is not required to provide copies of audio or visual items unless they were shown or played during a public meeting of the governing body (KSA 45-219a).

### V. Enforcement

Any request denied by an agency may be enforced by the district court in that county (KSA 45-222). Any public agency subject to this act that knowingly violates any of the provisions or intentionally fails to furnish information as required shall be liable for the payment of a civil penalty not to exceed \$500 for each violation (KSA 45-223).

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It is the intent of the legislature that exceptions to disclosure under the open records act shall be created or maintained only if: (1) the public record is of a sensitive or personal nature concerning individuals; (2) the public record is necessary for the effective and efficient administration of a governmental program; or (3) the public record affects confidential information (New Section 8, 2000 Session Laws, Chapter 156).

### COURT CLOSINGS

Here is a sample statement to use in the courtroom if a hearing is closed:

"Your honor, I am (your name), a reporter for the (newspaper name). I respectfully request the opportunity to register on the record an objection to the motion to close this proceeding to the public, including the press. Our legal counsel advises me that standards set forth in some recent federal and state court decisions require a hearing before the courtroom can be closed. Accordingly, I respectfully request such a hearing and a temporary recess so that I can report to my editor and so that our counsel can be present to make the appropriate arguments. Thank you."

*This reference guide is intended to provide an outline of the provisions of the Kansas Open Meetings and Open Records acts. This is not intended to provide an all-encompassing analysis. If you have additional questions, refer to the full text of the acts, contact your newspaper's legal counsel, or call the Kansas Press Association's Legal Hotline at 1-800-394-9415. Hotline advice is free for KPA member newspapers.*

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# Kansas Reporter's Pocket Guide To

- Open Meetings
- Open Records
- Court Closings

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## **OPEN MEETINGS ACT**

### **I. Definition of a meeting**

Any gathering or assembly, in person or through the use of a telephone or any other medium for interactive communication by a majority of the membership of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency. (Modified in 2008 legislative session)

Meetings in a series shall be open if they collectively involve a majority of the membership of the body or agency, share a common topic of discussion concerning the business or affairs of the 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 body or agency.

### **II. What meetings are covered**

The Kansas Open Meetings Act applies to all meetings for the conduct of the affairs and business transactions by those entities by whatever name (board, commission, authority, council, subcommittee, etc.) that are (1) legislative or administrative in nature; (2) part of a political or taxing subdivision of the state; (3) receiving or expending public funds; and (4) are supported in whole or in part by public funds (KSA 75-4318a). Consult the Attorney General's office for more information.

### **III. Notice, agendas, use of cameras, etc.**

Public bodies covered by the Act must provide notice of the time, date and place of all regular or special meetings to anyone who requests it (KSA 75-4318b). Your newspaper should file a standing written request for such notice with all public bodies.

The presiding officer of each public body (or the person calling the meeting) must provide the required notice (KSA 75-4318c). If the agenda has been prepared prior to the meeting, it must be made available to any person requesting a copy (KSA 75-4318d). Reasonable use of cameras, photographic lights and recording equipment may not be prohibited (KSA 75-4318e).

### **IV. Secret meetings**

Secret meetings are prohibited. However, public bodies may move from an open meeting into closed or executive session if a formal motion is made, seconded and passed.

The motion must state: (1) the justification for moving into closed session; (2) the subjects to be discussed secretly; and (3) the time and place the body will reconvene into open session.

The motion must be recorded and kept as a permanent record of the body (KSA 75-4319a). A public body is not allowed to take any binding action in secret session (KSA 75-4319c and KSA 75-4318a).

Bodies may discuss seven subjects in closed session: (1) Personnel matters of non-elected personnel; (2) Consultations with an attorney for the body that would be considered privileged in the attorney-client relationship; (3) Matters relating to employer-employee negotiations; (4) Confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts or individual proprietorships; (5) Matters relating to actions adversely or favorably affecting a person as student, patient or resident of a public institution, although

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that person may request a public hearing; (6) Preliminary discussions relating to the acquisition of real property; and (7) Security matters relating to a public body or agency.

Note: Additional statutes and amendments allow for the discussion of other matters in closed or executive session.

### **V. Violation of the Act**

If a meeting is not conducted in substantial compliance with the various terms of the Kansas Open Meeting Act, any binding action taken by the body can be invalidated – but only if the Attorney General or local district/county attorney acts within 21 days of the meeting. Members of a public body who knowingly violate the provisions of the Act or intentionally fail to furnish the required notice of a meeting may be subject to civil penalties of up to \$500 per violation (KSA 75-4320).

## **OPEN RECORDS ACT**

The governing body of every public agency in Kansas, which maintains public records, shall designate a local freedom of information officer. This officer or its designee shall: (1) Prepare and provide information about the Open Records Act; (2) Be available to assist in resolving disputes related to the Act; (3) Respond to inquiries related to the Act; and (4) Establish the requirements for a brochure covering the Act which is to be made available to the public.

The brochure that is to be made available to the public shall contain basic information about the rights of the requestor, responsibilities of a public agency, and the procedures for

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The brochure that is to be made available to the public shall contain basic information about the rights of the requestor, responsibilities of a public agency, and the procedures for

inspecting or obtaining a copy of public records under the Open Records Act (2000 Session Laws, Chapter 156).

### **I. Open and closed records**

Generally, all records (information recorded in any form or with any characteristics) made, maintained, kept or possessed by any public agency are open – that is, are required to be available for inspection and copying by any person. This includes information kept in computer files.

However, records are closed if specifically exempted by statute from the Open Records Act. KSA 45-221 lists 47 categories of records that are closed to the public. The list of closed records is both lengthy and, in some cases, too uncertain for inclusion here. Consult the Open Records Act, or call the Attorney General's office, for help in determining whether a specific record is covered by the Act.

### **II. How to request public records**

Each public body may adopt its own procedures for providing public access to records in its custody, but the Act sets minimum standards for all such procedures.

Agencies may require that all requests be in writing, but the request need contain only four things: (1) your name; (2) your address; (3) the record you are requesting; and (4) your "right of access" to that record if access to it is limited (KSA 45-220b).

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