



STATE OF KANSAS

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January 3, 1986

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ATTORNEY GENERAL OPINION NO. 86-1

John Dekker  
City Attorney  
City Hall - Thirteenth Floor  
455 North Main Street  
Wichita, Kansas 67202

Re: Laws, Journals and Public Information -- Records  
Open to Public -- Exceptions to Disclosure

Crimes and Punishments -- Criminal Code; Crimes  
Affecting Public Trusts -- Unlawful Use of Names  
Derived from Public Records

Synopsis: The Kansas Open Records Act, K.S.A. 1984 Supp.  
45-215 et seq., does not require that a city  
employee disclose names and addresses derived from  
city records to a person who the employee knows  
intends to use such names and addresses for a  
commercial purpose. Such disclosure is  
specifically prohibited by K.S.A. 1984 Supp.  
21-3914. Any person who receives a list of such  
names and addresses for the purpose of selling or  
offering to sell any property or service to listed  
persons may be found guilty of a misdemeanor.  
Cited herein: K.S.A. 1984 Supp. 21-3914; 45-221.

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Dear Mr. Dekker:

As City Attorney for the City of Wichita, Kansas, you request  
our opinion concerning the Kansas Open Records Act, K.S.A.  
1984 Supp. 45-215 et seq. (KORA), and K.S.A. 1984 Supp.  
21-3914. You first inquire about the legality of the city's

practice of disclosing to local newspapers of general circulation the names and addresses of persons who have hooked up to the city water department, while refusing to provide that same information to a "newsletter service" which would convey those names to its subscribers as sales prospects.

The KORA establishes as a general rule in Kansas that records maintained by public agencies in this state are to be open for public inspection and, if desired, copying. K.S.A. 1984 Supp. 45-221 contains exceptions to this general "openness" policy by providing that a public agency shall not be required to disclose records which fall into one of thirty-five enumerated categories. The statute does not prohibit disclosure of records which fall within an exception, but leaves the decision to disclose to the agency's discretion.

One provision of K.S.A. 1984 Supp. 45-221(a) would serve as a basis for the exercise of such discretion by the City of Wichita. It states that a public agency shall not be required to disclose the following:

"Records of a utility or other public service pertaining to individually identifiable residential customers of the utility of service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act."

Under the KORA, the City of Wichita may disclose the names and addresses of persons hooking up to the city water department unless that disclosure is specifically prohibited or restricted by state statute or other law. K.S.A. 1984 Supp. 45-221(a)(1). Conversely, the City of Wichita may decline to disclose those names and addresses unless disclosure of that information is required by a law other than the KORA. K.S.A. 1984 Supp. 45-221(a).

Our research has revealed no law other than the KORA which would compel the disclosure of records maintained by the city's water department. Rather, Kansas statutes contain a specific prohibition against the disclosure of names and addresses derived from public records under certain circumstances. With exceptions not relevant to this discussion, K.S.A. 1984 Supp. 21-3914 provides:

"No person shall knowingly sell, give  
or receive, for the purpose of selling  
or offering for sale any property or  
service to persons listed therein, any  
list of names and addresses contained in  
or derived from public records . . . ."  
(Emphasis added.)

Violation of this statute is a class C misdemeanor [K.S.A. 1984 Supp. 21-3914(b)], and this office has previously stated that it prohibits a public body from knowingly providing a list derived from public records to a person who intends to use it for the purpose of selling or offering to sell to the listed persons any property or services. See Atty. Gen. Opin. Nos. 84-16 and 85-34.

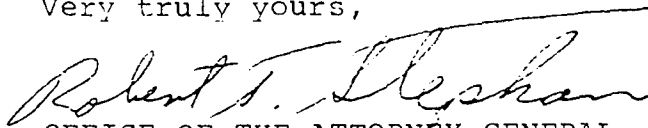
In our opinion, K.S.A. 1984 Supp. 21-3914 prohibits the City of Wichita from providing a list of names and addresses derived from the city water department's hook-up records to a person whom the city knows intends to use the list for any commercial purpose. The "newsletter service," although it does not directly solicit customers from that list, compiles and sells the names and addresses to its subscribers so those subscribers may solicit customers from that list. In light of the language in K.S.A. 1984 Supp. 45-220(c)(2)(B), we believe even such an "indirect" commercial purpose is within the type of activity the statute was intended to prohibit. Accordingly, the City may decline to provide the list in question to the "newsletter service" but may, in its discretion, provide the same list to local newspapers of general circulation which routinely include the list as a matter of public interest and in no way derive any financial benefit from that inclusion.

Your second question concerns the legality of the City's practice of allowing any person to come into the Central Inspection Division (C.I.D.) office of the City's Department of Housing and Economic Development to view completed applications for building permits. You advise that C.I.D. personnel make no attempt to limit access to the list or to inquire about the purpose for which the information is sought. You are aware that some persons copying names and addresses from the list use the list for commercial purposes.

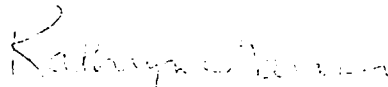
In our judgment, K.S.A. 1984 Supp. 21-3914(a) is violated when a city employee gives a list of names and addresses contained in or derived from public records of building permits to a person whom the employee knows intends to use that list for

any commercial purpose. The statute is not violated where an employee gives the list to a person without knowing the purpose for which the list is being sought. In that instance, the primary impact of the statute falls upon the person receiving the list. Where the person receiving the list obtains it for any commercial purpose, he or she may be found guilty of a violation of criminal law. In order to make the impact of the law clear to such recipients, the city may wish to employ a certification form of the type set forth at K.S.A. 1984 Supp. 45-220(c). A requester's refusal to provide the certification provides a basis for the city to refuse to release the information, even in the absence of any specific knowledge about the requester's purpose.

Very truly yours,



OFFICE OF THE ATTORNEY GENERAL  
ROBERT T. STEPHAN



Kathryn Gardner  
Assistant Attorney General

RTS:JSS:KG:crw