



STATE OF KANSAS

*Office of the Attorney General*

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CURT T. SCHNEIDER  
*Attorney General*

October 2, 1975

ATTORNEY GENERAL OPINION NO. 75-385

Mr. Edward F. Horne  
City Attorney  
Fick, Myers and Horne  
Union National Bank Tower  
Manhattan, Kansas 66502

Re: Corporations--Urban Renewal Law--Laws, Journals  
and Public Information--Official Public Records  
Open to Inspection--Exceptions

Synopsis: Based on our examination of these and the other associated statutes contained in the Urban Renewal Act, we are unable to find any specific statutory requirement for the maintenance of those records hereinbefore listed. While it must be conceded that those documents filed with a Court pursuant to the exercise of eminent domain powers given this agency by K.S.A. 17-4749 are within the purview of inspection privilege granted by the Kansas public records law, this grant alone is insufficient to authorize a blanket inspection of all those various documents specified in the request which are contained in the file relative to any particular acquisition or relocation.

\* \* \*

Dear Mr. Horne:

In your capacity as City Attorney for Manhattan, you have requested an opinion from this office concerning the extent to which the Kansas public records law, K.S.A. 45-201 *et seq.*, applies to an inspection of the entire file of documents and papers maintained by the local Urban Renewal Agency relating primarily to land acquisitions and payments made for relocation pursuant to the authority granted that body under the

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Urban Renewal Act of 1965, K.S.A. 17-4742 *et seq.* Specifically, you have cited the following material as frequently included among other documents in the file:

1. Income tax returns.
2. Other income data.
3. Marital status.
4. Number of dependents.
5. Status of the person regarding any determination of poverty or nonpoverty.
6. Information regarding negotiations that have not yet ended in a completed transaction.

The right to inspection of official public records is granted by K.S.A. 45-201 which provides in pertinent part:

"All official public records of the state, counties, municipalities, townships, school districts, commissions, agencies and legislative bodies, which records by law are required to be kept and maintained, except those of the juvenile court which shall be open unless specifically closed by the judge or by law, adoption records, records of the birth of illegitimate children, and records specifically closed by law or by directive authorized by law, shall at all times be open for a personal inspection by any citizen, and those in charge of such records shall not refuse this privilege to any citizen."

The term "official public record" is not specifically defined by the public records law. Some insight into its definition may be gleaned from the following excerpt from 11 K.L.R. 157, *Inspection of Public Records*, where the author states:

"The right of inspection is limited to public records. A public record is one required by law to be kept in discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done. What is a public record is a question of law. The essential elements to constitute a public record are namely

that it be a written memorial, that it be made by a public officer, and that the officer be authorized by law to make it."

In view of the Kansas statute which mandates that the record be "by law . . . required to be kept and maintained," the writer goes on to further state:

"The mere fact that a record made by a public officer is on file in a public office or is in the custody of a public officer does not make it a public record."

With this background, the matter central to resolution of this inquiry then is an interpretation of the phrase "by law are required to be kept and maintained," relative to the myriad of state and federal statutes, rules and regulations applicable to and which require or necessitate those records, files and documents presently maintained by the Urban Renewal Agency in Manhattan.

In this regard, the Kansas Urban Renewal Law, K.S.A. 17-4742 *et seq.*, vests those powers relative to urban renewal enumerated in K.S.A. 17-4748 in each municipality or, alternatively, in an Urban Renewal Agency formed pursuant to the procedure outlined in K.S.A. 17-4756. Based on our examination of these and the other related statutes contained in the Urban Renewal Act, we are unable to find any specific statutory requirement for the maintenance of those records hereinbefore listed. While clearly those documents filed with a Court pursuant to the exercise of eminent domain powers given this agency by K.S.A. 17-4749 are within the purview of the inspection privilege granted by the Kansas public records law, this grant alone is insufficient to authorize a blanket inspection of all those various documents specified in the request which are contained in the agency file relative to any particular acquisition or relocation. Our examination of these statutes leads us to conclude that the following constitutes the only public records required by the urban renewal law within the purview of K.S.A. 45-202:

1. The urban renewal plan (K.S.A. 17-4747);
2. Documents filed with the Court pursuant to the exercise of the power of eminent domain (K.S.A. 17-4749);

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3. The transcript of proceedings leading to the issuance of any municipal bonds (K.S.A. 17-4754 and K.S.A. 10-108);
4. All ordinances and resolutions passed by the municipality in order to create an Urban Renewal Agency or exercise the powers that appertain thereto (See K.S.A. 17-4759, 17-4756, and 17-4747); and
5. Any and all other documents filed with a Court in relocation to any urban renewal matter.

As in most instances where the federal government provides funds to a state agency for specified purposes contained in the federal enabling statute, the receipt of federal funds is often subject to continued adherence to rules and regulations promulgated by the federal agency making the grant. In this case, the Manhattan Urban Renewal Agency is, as of March 31, 1975, subject to those regulations contained in the Department of Housing and Urban Development Handbook 1371.1 REV. Relocation Policies and Procedures. These regulatory measures were properly published in the Federal Register at 40 FR 7602 on February-20, 1975, and, thereby, became effective as such pursuant to the procedure outlined in the Administrative Procedure Act found at 5 U.S.C.A. 551 *et seq.* It is our understanding based on communication with the Regional Office of the Department of Housing and Urban Development that the regulations contained in the Relocation Handbook 1371.1 REV. are applicable to the local office in Manhattan. Thus, the question arises whether records required to be kept and maintained by this handbook are subject to the disclosure requirements of K.S.A. 45-201 *et seq.* In other words, are those records which are required to be kept and maintained by a state or municipal agency pursuant to federal regulation within the ambit of the Kansas public records law.

In this particular instance, it is our view that this precise question need not be directly answered. In the transmittal accompanying Relocation Handbook 1371.1 REV, the Department of Housing and Urban Development states:

"5. *Effective Date:*

The policies and requirements set forth in the revised Handbook apply to displacement on or after March 31, 1975. Claims not yet submitted or approved that pertain

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to displacement prior to that date are to be processed in accordance with the regulations of May 13, 1971, as amended August 17, 1972, but in compliance with the new timing requirements set forth in Chapter 4, Section 2, of the revised Handbook."

The clear meaning of this portion of the transmittal is that the former regulations contained in Relocation Handbook 1371.1 are limited in application to the processing of claims not yet submitted or approved for persons displaced prior to March 31, 1975. The pertinent implication is that in all other respects, aside from the processing of these types of claims, the agency must adhere to the new regulations contained in Relocation Handbook 1371.1 REV.

The importance of this distinction lies in the following excerpt taken from Chapter 7 of Relocation Handbook 1371.1 REV.

"7-1. *INTRODUCTION.* This Chapter describes local agency requirements for maintaining relocation records and submitting reports on relocation activities.

7-2. *RELOCATION RECORDS.*

...

D. *Confidentiality of Relocation Records.* Relocation records are confidential and not subject to be treated as public information. Only authorized local agency personnel or HUD staff members may have access to the records. However, upon written request of a displaced person (or person to be displaced), the local agency may release a copy of the pertinent record(s) to him or to his designee."

In other words, even assuming that the words "by law" in the phrase "by law are required to be kept and maintained" is broadly defined to include federal statutes, rules and regulations, it is of no consequence here in view of the requirement of confidentiality cited above. It should be noted that this comes within the exception to K.S.A. 45-202 which authorizes denial of public inspection where the records [are] specifically

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closed by law or by directive authorized by law . . . "

In light of the above discussion, it is the considered opinion of this office that the entire urban renewal file, including the material specified above, is not subject to a request for public inspection made pursuant to K.S.A. 45-201 *et seq.*

Yours very truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:HTW:kj