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ATTORNEY GENERAL OPINION NO. 83- 116

William L. Edds  
General Counsel  
Department of Revenue  
State Office Building  
Topeka, Kansas 66625

Re: Laws, Journals and Public Information -- Records  
Open to Public -- Inspection, Access and Copying

Synopsis: Section 4(d) of 1983 House Bill No. 2327 (L. 1983, ch. 171), the new Kansas Open Records Act, provides that each request for access shall be acted upon as soon as possible, but not later than three business days following receipt of the request. Only if the request cannot be met within this time must the custodian of the records provide an explanation of the cause for further delay. In addition, the phrases "provide access to" and "permit inspection of" are used interchangeably throughout the bill, and may accordingly be treated as synonymous for purposes of interpretation. Both phrases concern the right of the public to examine public records, and so are different than the right to make copies. Cited herein: L. 1983, Ch. 171.

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Dear Mr. Edds:

As General Counsel of the Kansas Department of Revenue, you request our opinion on two questions concerning the new open records law, which was enacted by the legislature in 1983 House Bill No. 2327, now L. 1983, ch. 171. The bill, which becomes law on January 1, 1984, replaces the prior open public records act, which appeared at K.S.A. 45-201 et seq.

Your first query involves the language used in Section 4(d) of the bill, which concerns the time in which requests for public records must be answered. As originally written, 1983 House Bill No. 2327 subsection 4(d) stated:

"Each request for access to a public record shall be acted upon as soon as possible, but not later than the end of the second business day following the date that the request is received. If the request is not acted upon immediately, the custodian shall give an explanation of the cause for delay. If the request is granted, the custodian shall make the record available for inspection at the time the request is granted unless the custodian gives a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. If the request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for the denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester not later than the end of the first business day following the date that the request for the statement is received." (Emphasis added.)

In its final form, the subsection was amended so as to read:

"Each request for access to a public record shall be acted upon as soon as possible, but not later than the end of the third business day following the date that the request is received. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. If the request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for the denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester not later than the end of the third business day following the date that the request for the statement is received." (Emphasis added.)

The effect of these amendments, in addition to extending the time allowed for a response from two to three business days, also eliminates one step in the procedure. Under the original bill, a failure to act immediately required an explanation for the delay, while a failure to provide the material after granting the request required a detailed explanation for the cause of the "further delay." In making the procedure more direct, the amended subsection requires action (either a grant or denial) within the three day period, an explanation required only if access is delayed or, alternatively, denied.

The problem you raise concerns the use of the word "immediately" in the second sentence, and how it relates to the language in the first sentence which requires action as soon as possible, but not later than three business days. If the word is interpreted to mean that action must be taken at once or a detailed explanation given, then the effect of the three day period is diminished. The alternative interpretation, which we believe to be preferable, would equate "immediate" action with action taken within the three day period, with explanations required only if a request could not be acted upon by then. We believe this result to be in keeping with the action of the legislature in amending this portion of the bill so as to streamline the process. Here, as is always the case, effect should be given to the intent of the legislature [State ex rel. Stephan v. Martin, 227 Kan. 456 (1980)], with such intent to be determined from the wording of the act alone, if possible.

Your second query involves the Act's useage of the phrases "provide access to" and "permit inspection of" with regard to a custodial agency's records sought by the public. As you note in your letter, the two phrases are used interchangeably throughout the Act. For example, subsection (d) of section 4 quoted above speaks of a "request for access" which is received by a public agency. If such a request cannot be met without delay, the agency must notify the requester as to when the record will be made available "for inspection." In the same way, while subsections (a) and (b) of the section use the word "inspect", subsection (f) speaks of "providing access to" records, while subsection (e) actually speaks of the two actions in the disjunctive ("[a] custodian may refuse to provide access to a public record, or to permit inspection"). You inquire whether any difference in meaning can be ascribed to the use of these different terms.

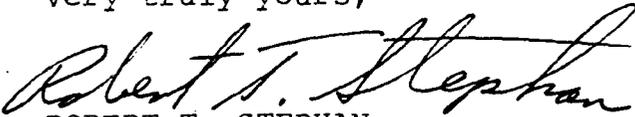
In our opinion, while not a model of drafting clarity, the Act's use of the two phrases is not a defect which renders it unworkable or open to attack as vague or ambiguous. The bill makes it clear at the outset (at section 2) that the public policy of the state favors open records, and that the

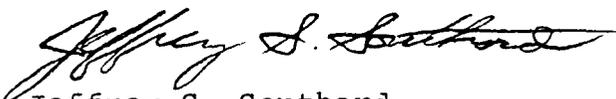
act should be liberally construed and applied to promote such a policy. In effecting such a policy, the entire act must be read as a whole. Brown v. Keill, 224 Kan. 195 (1978). When the interpretation of one section of the act according to the literal import of its words would contravene the manifest purpose of the legislature, the spirit and reason of the entire act controls. State ex rel. Ludwick v. Board of Johnson County Commr's, 233 Kan. 79 (1983). Such a situation would exist here if the two phrases were held to mean different things, for an agency could theoretically provide access to material without allowing the kind of inspection needed to learn anything from it. Such an absurd result cannot be conceived under the scope of the Act, leaving it necessary to construe the phrases as synonymous for the present.

You also raise questions of interpretation concerning two other phrases which also appear frequently throughout the Act, namely "furnishing (or obtaining) copies" and "disclosure." While the plain words of the former clearly mean more than "access" or "inspection", the meaning of these phrases, like those cited above, can only be determined in the context of their use, on a section by section basis. However, as was noted earlier, the Act must be interpreted in a liberal fashion, with doubts resolved in favor of openness. As questions arise concerning particular sections, this office will of course be willing to assist in the process of determining the intent of the Legislature.

In conclusion, section 4(d) of 1983 House Bill No. 2327 (L. 1983, ch. 171), provides that each request for access shall be acted upon as soon as possible, but not later than three business days following receipt of the request. Only if the request cannot be met within this time must the custodian of the records provide an explanation of the cause for further delay. In addition, the phrases "provide access to" and "permit inspection of" are used interchangeably throughout the bill, and may accordingly be treated as synonymous for purposes of interpretation. Both phrases concern the right of the public to examine public records, and so are different than the right to make copies.

Very truly yours,

  
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