



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 43

Roger W. Lovett
Chief Legal Counsel
Commission on Civil Rights
214 SW 6th Street, 1st Floor
Topeka, Kansas 66603

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

Synopsis: The Kansas Open Records Act, K.S.A. 1985 Supp. 45-215 et seq., does not require a public agency to prepare a report in a particular form to satisfy a request for information. A public agency is only required to make available to the public those records which it makes, maintains, keeps or possesses. Further, a public agency is not required to prepare a statistical report based on information contained in records exempted under K.S.A. 1985 Supp. 44-221(a), as disclosure of these records is discretionary with the agency. Cited herein: K.S.A. 1985 Supp. 45-216; 45-217; 45-221.

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Dear Mr. Lovett:

As chief legal counsel for the Kansas Commission on Civil Rights, you request our opinion regarding records required to be disclosed by a public agency under the Kansas Open Records Act. Specifically, you ask the following questions:

- "A. Does the open records act or any other statute require an agency to create a report to satisfy the requests of an individual?

"B. Do the provisions of K.S.A. 45-221(d) require an agency to prepare a statistical report based on materials contained in records . . . under the provisions of K.S.A. 45-221(a) . . . at the request of an individual?"

You inform us that your agency has been requested to produce a record which would break down complaints received by the commission and give statistical data as to the disposition of the cases. This information is contained in records of the agency but is not compiled in the form requested. You state that compliance with the request would require the agency to create a record for the individual.

Under the Kansas Open Records Act (KORA), K.S.A. 1985 Supp. 45-215 et seq., public records are to be open for public inspection by any person unless otherwise provided by the act. K.S.A. 1985 Supp. 45-216(a). A public record is defined in K.S.A. 1985 Supp. 45-217(f) (1) as follows:

"'Public record' means any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency."

It is clear under this definition that a public agency is only required to make available to the public those records which it makes, maintains, keeps or possesses. The KORA imposes no duty on a public agency to create a record to compile specific information requested by an individual. A public agency may be required by law, however, to record or compile certain information in a particular form. Our research has revealed no statute or regulation which requires the Commission on Civil Rights to produce a document such as that being requested from the agency. In this case the requested information is contained in records open to the public. The requestor is not prohibited from obtaining these records and compiling the information in whatever form he desires.

You also ask the following question: if the commission has records which it is not required to disclose, would K.S.A. 1985 Supp. 45-221(d) require the commission to prepare, upon request, a statistical report based on information contained in those records? As noted above, a public record is to be open unless it falls within one of the thirty-five categories of records listed in K.S.A. 1985 Supp. 45-221(a) which public agencies are not required to disclose. K.S.A. 1985 Supp. 45-221(d) provides as follows:

"The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person."

Disclosure of records which fall into a category listed in K.S.A. 1985 Supp. 45-221(a) is discretionary. There is accordingly no requirement that an agency prepare and make available a statistical report based on information contained in a record which is listed under K.S.A. 1985 Supp. 45-221(a) insofar as the agency can refuse to release the record itself. The discretionary power of a public agency to close specified records to public disclosure would be meaningless if the agency were required to prepare reports from these records for public scrutiny. K.S.A. 45-221(d) merely provides that, if an agency has prepared a statistical document from information contained in records listed under K.S.A. 1985 Supp. 45-221(a), this document is not exempt from disclosure, provided that the data does not identify any person.

In summary, the KORA does not require a public agency to prepare a report to satisfy a request for information in a particular form. A public agency is only required to make available to the public those records which it makes, maintains, keeps or possesses. K.S.A. 1985 Supp. 45-221(d) does not require a public agency to prepare a statistical report based on information contained in records exempted under K.S.A. 1985 Supp. 44-221(a) as disclosure of these records is discretionary with the agency.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
Assistant Attorney General

RTS:JSS:RLN:crw