



STATE OF KANSAS

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ATTORNEY GENERAL

July 15, 1986

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CONSUMER PROTECTION: 29

ATTORNEY GENERAL OPINION NO. 86- 101

Peter E. Rinn, Chief Counsel
Department of Social and
Rehabilitation Services
State Office Building
Topeka, Kansas 66612

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

Synopsis: It is the public policy of this state that public records must be open for inspection by any person unless otherwise provided by law. In that the exceptions listed in the KORA are not applicable to the information in question and disclosure of the information is not prohibited by statute, we must conclude that the financial information contained in reports submitted by an adult care home to SRS is subject to disclosure under the Kansas Open Records Act. Cited herein: K.S.A. 1985 Supp. 39-708c(x); K.S.A. 45-215 et seq.; K.S.A. 1985 Supp. 45-217; 45-221; K.A.R. 30-10-12; K.A.R. 30-10-13.

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Dear Mr. Rinn:

As chief counsel for the Department of Social and Rehabilitation Services (SRS), you request our opinion whether certain information contained in reports submitted to SRS is subject to the Kansas Open Records Act.

Under Kansas law, health care facilities with a current, signed provider agreement are to be paid by the state on a reasonable cost related basis for services furnished to

eligible beneficiaries. K.A.R. 30-10-12. By statute, the secretary of SRS is required to establish payment schedules for each group of health care providers as follows:

"Any payment schedule established by the secretary shall be based, as appropriate, on either reasonable charges, reasonable costs or prospective rates"
K.S.A. 1985 Supp. 39-708c(x).

K.A.R. 30-10-13(a) (1) provides:

"The rate or rates for providers participating in the medicaid (medical assistance) program shall be based on an individual audit or review of the per diem cost to provide patient care in each home. The basic data for conducting such audits or review shall be based on the completion of the financial and statistical report for nursing homes."

The information to be included in the report is then outlined in K.A.R. 30-10-13.

You submit for our examination a copy of a cost report form, designated as MS-2004, which an adult care home must complete to participate in the Medicaid/MediKan program. The purpose of the form is stated in the document as follows:

"to obtain information concerning the patient related costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards."

The form requires the facility to submit financial information such as a balance sheet reflecting assets and liabilities of the facility, a reconciliation statement showing beginning and ending balances, and a revenue statement. We are informed that an adult care home has requested that such financial data it furnished to SRS be kept confidential. You ask whether under the open records laws such a request can be honored.

Under the Kansas Open Records Act (KORA), K.S.A. 45-215 et seq., a public record is to be open for inspection by any person unless it falls within one of the categories of records which are not required to be disclosed or disclosure of which

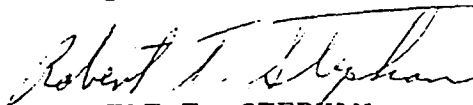
is specifically prohibited by statute. K.S.A. 1985 Supp. 45-221(a). A public record is defined as "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency." K.S.A. 1985 Supp. 45-217(f)(1). SRS is clearly a "public agency."

Records which fall into any of the categories enumerated in the act are not prohibited from disclosure. Rather, the public agency has discretion whether to make the record available to the public. The only exception which exempts financial information from mandatory disclosure is K.S.A. 1985 Supp. 45-221(a)(34). This exception is not applicable as it is limited to "[f]inancial information submitted by contractors in qualification statements to any public agency." Further, the financial information in question does not qualify under any category listed in the Act as a record which may be closed to public inspection.

A provision among the statutes concerning adult care homes, K.S.A. 39-934, states that information received through filed reports shall not be disclosed so as to identify individuals. This statute, however, does not prevent disclosure of records which identify a particular facility. Our research has not revealed any statute which prohibits the disclosure of financial information contained in reports sent to SRS.

It is the public policy of this state that public records must be open for inspection by any person unless otherwise provided by law. The exceptions listed in the KORA are not applicable to the information in question and disclosure of the information is not prohibited by statute. Therefore, we must conclude that the financial information contained in reports submitted by an adult care home to SRS is subject to disclosure under the Kansas Open Records Act.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
Assistant Attorney General