



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87-137

Philip S. Harness
Johnson County Counselor
Legal Services Office
110 S. Cherry, Suite 8
Olathe, Kansas 66061

Re: Laws, Journals and Public Information -- Records
Open to Public -- Lists of Names and Addresses
Derived from Public Records; Prohibited Uses

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

Synopsis: A custodian of public records who reasonably believes that a requestor will use the information for prohibited purposes must deny access to the records. Disclosure of the information in such a case will subject the custodian to possible criminal charges. The Kansas Open Records Act does not require a public agency which maintains records on computer facilities to write a computer program to produce requested information in a certain form if the information is available in existing records. Cited herein: K.S.A. 1986 Supp. 21-3914; K.S.A. 45-215; 45-216; 45-217; 45-220.

Dear Mr. Harness:

As County Counselor for Johnson County, Kansas, you request our opinion on two questions concerning the Kansas Open Records Act (KORA), K.S.A. 45-215 et seq.

Your first question is as follows:

"If the custodian of public records reasonably believes that the requestor will use the list of names for the purpose of selling or offering for [sale] property or services to persons listed or to persons who reside at any address listed, or will make available the list to any other person for the purpose of allowing that person to sell or offer for [sale] property or services to any person listed or to any person who resides at any address listed, may the custodian withhold disclosure or is the sole remedy prosecution by the district attorney pursuant to K.S.A. 21-3914?" (Emphasis added).

The KORA provides that public records of public agencies must be made available to any person upon request. K.S.A. 45-216. There are, however, limits placed on the use of information derived from public records. One of the procedures for obtaining access to public records is K.S.A. 45-220 (c):

"[T]he agency may require a person requesting the records or information therein to provide written certification that:

. . . .

"(2) the requestor does not intend to, and will not: (A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or (B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed."

K.S.A. 1986 Supp. 21-3914 provides:

"(a) 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. . . .

. . .

"(b) Violation of this section is a class C misdemeanor."

We believe the statute is clear that a custodian of public records who reasonably believes that the requestor will use the information for prohibited purposes must deny access to the records. Disclosure of information in this instance will subject the custodian to possible criminal charges. Written certification furnished by the requestor to the custodian at the time of the request is evidence whether the custodian knowingly gave the information under prohibited circumstances.

You also ask the following question:

"If certain records are maintained on computer facilities, but the list requested by the requestor would require the County to write a separate computer program, and the requestor is willing to pay for the cost, pursuant to K.S.A. 45-219(c) (2), must the County write the separate program or may it allow access only to the tax cards themselves or copies of such tax cards?"

You inform us that it would be less expensive for the requestor to pay the costs of writing a computer program than to pay the costs of obtaining copies of the tax cards.

A public record is defined in K.S.A. 45-217(f) (1) as follows:

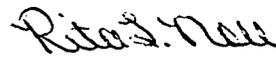
"'Public record' means any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is the possession of any public agency."

Thus, 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. Therefore, it is our opinion that a public agency is not required under the KORA to write a computer program if the information requested is available in existing records. While an individual has the right to obtain copies of public records, there is no right to obtain the records in the least expensive manner.

In summary, a custodian of public records who reasonably believes that a requestor will use the information for prohibited purposes must deny access to the records. Disclosure of the information in such a case will subject the custodian to possible criminal charges. The Kansas Open Records Act does not require a public agency which maintains records on computer facilities to write a computer program to produce requested information in a certain form if the information is available in existing records.

Very truly yours,


ROBERT T. STEPHAN
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