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ATTORNEY GENERAL OPINION NO. 92-28

The Honorable Nancy Parrish
State Senator, 19th District
State Capitol, Room 403-N
Topeka, Kansas 66612

Re: Public Records, Documents and Information --
Records Open to Public -- Procedures for Obtaining
Access to or Copies of Records

Synopsis: If a public record is not closed or its use limited, a public agency may only require a written request, advance payment of prescribed fees and proof of the requestor's identity prior to granting access to or copies of such open public records. A public agency may adopt procedures designed to safeguard public records and minimize disruption of public business and may supply a form for requesting records as a means of facilitating the process. However, the agency may not require that a written request for an open public record be made in a certain form prior to granting access to or copies of such records. However, if the requested record's use is limited pursuant to K.S.A. 21-3914 or K.S.A. 1991 Supp. 45-221, a public agency may also require a notarized statement attesting to the matters set forth in K.S.A. 45-220(c)(1) or (2). Cited herein: K.S.A. 21-3914; 45-215; 45-217; 45-219; 45-220; K.S.A. 1991 Supp. 45-221; K.S.A. 53-101.

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Dear Senator Parrish:

You request our opinion on whether public agencies subject to the Kansas Open Records Act may require requestors to sign a written notarized request prior to obtaining access to or copies of public records.

K.S.A. 45-215 et seq. create the Kansas Open Records Act (KORA) and generally declare that public records shall be open for inspection unless otherwise provided by the act. K.S.A. 45-217 defines public agencies and public records subject to the KORA. For the purposes of this opinion we will assume that the record and agency in question are in fact subject to the KORA.

K.S.A. 45-219 addresses abstracts or copies of records and states in pertinent part:

"(a) Any person may make abstracts or obtain copies of any public record to which such person has access under this act. If copies are requested, the public agency may require a written request and advance payment of the prescribed fee. . . ."

K.S.A. 45-220 also speaks to procedures for obtaining copies of public records:

"(a) Each public agency shall adopt procedures to be followed in requesting access to and obtaining copies of public records, which procedures shall provide full access to public records, protect public records from damage and disorganization, prevent excessive disruption of the agency's essential functions, provide assistance and information upon request and insure efficient and timely action in response to applications for inspection of public records.

"(b) A public agency may require a written request for inspection of public records but shall not otherwise require a request to be made in any particular form. Except as otherwise provided by

subsection (c), a public agency shall not require that a request contain more information than the requester's name and address and the information necessary to ascertain the records to which the requester desires access and the requester's right of access to the records. A public agency may require proof of identity of any person requesting access to a public record.

"(c) If access to public records of an agency or the purpose for which the records may be used is limited pursuant to K.S.A. 21-3914 or 45-221, and amendments thereto, the agency may require a person requesting the records or information therein to provide written certification that:

"(1) The requester has a right of access to the records and the basis of that right; or

"(2) the requester 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." (Emphasis added).

When access to or copies of an open public record are requested, public agencies subject to the KORA may, pursuant to K.S.A. 45-220, (1) require written request for copies, (2) require advance payment of prescribed fees, (3) require proof of the requester's identity, including their name and address, (4) require information necessary to ascertain the records to which the requester desires access and the requester's right

of access to the records, and (5) adopt procedures for requesting access and copies of public records.

The procedures adopted by the public agency should be designed to protect public records from damage and disorganization and prevent excessive disruption of the agency's essential functions, while nevertheless providing full access to open public records and providing assistance and information upon request.

The written request approved by K.S.A. 45-219(a) is more completely addressed in K.S.A. 45-220(b). While the agency may not require that the written request be in a particular form, K.S.A. 45-220(b) permits a public agency to require the written provision of certain information. Thus, except as otherwise provided by K.S.A. 45-220(c), a public agency may only require that requests for access or copies of public records be in written form, accompanied by advance payment of prescribed fees, and that the written request contain proof of the requester's identity (including their name and address) and enough information necessary to ascertain the records to which the requester desires access and the requester's right of access to the records.

However, K.S.A. 45-220(c) grants increased authority to public agencies when the use of the requested record is limited by K.S.A. 21-3914 or K.S.A. 1991 Supp. 45-221. When dealing with a public record which lists names and addresses, K.S.A. 21-3914 provides criminal penalties against those who provide or obtain such a public record for the purpose of selling or offering to sell any property or service to a person listed therein. See Attorney General Opinions No. 89-47, 87-73, 87-13, 86-39, 86-1, 85-34, 84-130, 84-106 and 84-45. K.S.A. 1991 Supp. 45-221 contains certain records which may be discretionarily closed or disclosed. If disclosed, the use of some of these types of records is limited.

Thus, if the requested record meets the description of limited use set forth in K.S.A. 21-3914 or K.S.A. 1991 Sup. 45-221, a public agency may, in addition to those matters approved by K.S.A. 45-220(b), also require written certification of those matters set forth in K.S.A. 45-220(c)(1) or (2).

Certification is defined as "the formal assertion in writing of some fact." Blacks Law Dictionary 206 (5th ed. 1979). Merely writing an assertion does not "certify" that fact. Notarization under K.S.A. 53-101 et seq. is the procedure adopted by the state for acknowledgement of formal

written declarations or assertions. Thus, it is our opinion that a public agency may require notarization of statements made under oath attesting to the information set forth in K.S.A. 45-219(c)(1) or (2) prior to granting access to or copies of records whose use may be limited pursuant to K.S.A. 21-3914 or K.S.A. 1991 Supp. 45-221. If a record is not subject to limitations imposed by K.S.A. 21-3914 or K.S.A. 1991 Supp. 45-221, notarization of the written record request may be requested by the public agency, but may not be required prior to granting public access.

Very truly yours,



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