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July 11, 2017

ATTORNEY GENERAL OPINION NO. 2017- 10

The Honorable Jim Ward
House Minority Leader
State Capitol, Room 359-W
300 S.W. 10th Avenue
Topeka, Kansas 66612

Re: Elections—Registrations of Voters—Application for Registration;
Limitations on Public Inspection of Registrations

State Departments; Public Officers and Employees—Public Records—
Social Security Numbers; Disclosure in Public Documents with Personal
Information, Prohibited; Use for Commercial Purposes, Restricted

Synopsis: The Secretary of State is prohibited by Kansas law from releasing the last four digits of a registered voter's Social Security number and also may not release the residence address of any registered voter who has properly requested that his or her address be concealed as allowed by statute. With those exceptions, Kansas law allows the Secretary of State, in his (or her) discretion, to release records containing the full name, date of birth, and party affiliation of a registered voter. Cited herein: K.S.A. 2016 Supp. 25-2304; 25-2309; 25-2320; K.S.A. 45-216; K.S.A. 2016 Supp. 45-217; K.S.A. 45-218; K.S.A. 2016 Supp. 45-220; 45-221; 45-230; 50-7a01; and 75-3520.

* * *

Dear Representative Ward:

As House Minority Leader, you ask our opinion¹ whether the Secretary of State may disclose to the federal government voter registration information that “will contain the full

¹ Your letter requesting our opinion is undated, but we received it on July 3, 2017.

name, address, date of birth, party affiliation and the last four digits of [the voter's] [S]ocial [S]ecurity number.”² You question “the legality of sending this data to the federal government without the consent of individual Kansas voters or without legislative approval,” and express concern that doing so may violate state privacy laws.

The Secretary of State is required by statute to maintain a centralized voter registration database that “shall include all necessary voter registration information from every county within the state of Kansas.”³ The information that a person must supply to the county election officer when registering to vote, and that therefore ultimately becomes part of the Secretary of State’s database, is required by statute to include all five of the data elements about which you have inquired.⁴ The information contained in that database is a “public record”⁵ possessed by a “public agency”⁶ within the meaning of the Kansas Open Records Act (KORA).⁷ The Legislature has declared the public policy of Kansas to be that “public records shall be open for inspection by any person unless otherwise provided by [the KORA]” and has directed that the KORA “shall be liberally construed and applied to promote such policy.”⁸ Under the KORA, “any person,” including persons working for the federal government, may inspect public records in Kansas.⁹

Your question is whether the Secretary of State may disclose the information in its voter registration database. The KORA either requires or allows the disclosure of these public records unless some other provision of law forbids disclosure.¹⁰

² We note that you also seem to ask more broadly about the “disclos[ure] [of] private voter data to the federal government”; however, in the letter requesting the information of which you speak, the Presidential Advisory Commission on Election Integrity, acting through its vice-chair, specifically requested “publicly available voter roll data for [the State], including, *if publicly available under the laws of [the] state*, the full first and last names of all registrants, middle names or initials if available, addresses, dates of birth, political party (if recorded in [the] state), last four digits of social security number if available, voter history (elections voted in) from 2006 onward, active/inactive status, cancelled status, information regarding any felony convictions, information regarding voter registration in another state, information regarding military status, and overseas citizen information.” Because the request asks only for data “publicly available under the laws of [the] state,” it would appear on its face to exclude from the request any private data. See Presidential Advisory Commission on Election Integrity Letter to the Secretaries of State, June 28, 2017. This opinion addresses only the five specific data fields you enumerated – full name, address, date of birth, party affiliation and the last four digits of the voter’s Social Security number.

³ K.S.A. 2016 Supp. 25-2304(b).

⁴ See K.S.A. 2016 Supp. 25-2309(b) (list of required information, including name, address, date of birth, party affiliation and the last four digits of the voter’s Social Security number).

⁵ K.S.A. 2016 Supp. 45-217(g)(1).

⁶ K.S.A. 2016 Supp. 45-217(f)(1).

⁷ K.S.A. 45-215 *et seq.*

⁸ K.S.A. 45-216(a).

⁹ K.S.A. 45-218(a).

¹⁰ K.S.A. 2016 Supp. 45-221(a) enumerates 55 exceptions to the KORA’s general policy of mandatory disclosure, but “[t]he KORA does not prohibit disclosure of records contained within these exceptions but makes their release discretionary with the agency’s official records custodian.” *Data Tree, LLC v. Meek*, 279 Kan. 445, 455 (2005). If no exception to disclosure in the KORA applies, then the public agency is not only allowed but required to disclose a record in response to a request for records. Determining whether the Secretary of State is statutorily required to disclose any of the records he is allowed to disclose would require an extensive analysis to determine whether any KORA exemption to disclosure applies. We do not perform that analysis because your question about the “legality” of release is answered once we determine that Kansas law allows the release of certain data elements.

In this case, neither courts nor the Secretary need speculate about how to balance the privacy interests of Kansas voters with the public need to know the requested information because the Legislature has performed that balancing.¹¹ By statute, the Legislature authorized disclosure of most of this information but has prohibited disclosure of the Social Security number.¹² Thus, the Secretary of State is forbidden to release the last four digits of a voter's Social Security number submitted as part of a voter registration and must redact that information from any records that may be released.¹³

Another Kansas statute allows any registered voter to request that his or her residence address "be concealed from public inspection on the voter registration list and on the original voter registration application form."¹⁴ To do so, the voter must make the request in writing to the county election officer and must "specify a clearly unwarranted invasion of personal privacy or a threat to the voter's safety."¹⁵ When such a request is properly made, "the county election officer shall take appropriate steps to ensure that such person's residence address is not publicly disclosed."¹⁶ Although this statute addresses the duty of the county election officer, not explicitly of the Secretary of State, we think the intent of the Legislature is clear that a registered voter shall have the ability to prevent Kansas election officials from publicly disclosing his or her residence address.¹⁷

We are unaware of any statute¹⁸ that prohibits the dissemination of the other data elements about which you ask – name, date of birth, or party affiliation.¹⁹ Thus, records

¹¹ See generally, *Data Tree, LLC v. Meek*, 279 Kan. 445, 462 (2005) (discussing balancing of interests).

¹² K.S.A. 2016 Supp. 25-2309(j). At least two other statutes also prohibit the public dissemination of the entire Social Security number of an identifiable person. K.S.A. 2016 Supp. 25-2320(b) and 75-3520. We think these statutes reflect a strong public policy to protect such highly personal information.

¹³ *Id.*

¹⁴ K.S.A. 2016 Supp. 25-2309(i).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ There may be other mandatory or discretionary exemptions to disclosure that apply; this a factual determination left to the public agency.

¹⁸ The Kansas Supreme Court has held that under certain circumstances, the dates of birth contained in public records may be discretionarily withheld under K.S.A. 2014 Supp. 45-221(a)(30), which allows a public agency to refuse to disclose "[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." See *Data Tree, supra*. However, the Court made clear that this is a case-by-case determination that requires "balancing the privacy interests of the individual with the public's need to know." *Id.* at 462. K.S.A. 2016 Supp. 45-221(a)(30) is identical to K.S.A. 2014 Supp. 45-221(a)(30).

¹⁹ In your letter, you cite K.S.A. 2016 Supp. 50-7a01. That statute, which relates to security breaches of consumer information, defines "personal information" as "a consumer's first name or first initial and last name linked to any one or more of the following data elements that relate to the consumer, when the data elements are neither encrypted nor redacted: (1) Social Security number; (2) driver's license number or state identification card number; or (3) financial account number, or credit or debit card number, alone or in combination with any required security code, access code or password that would permit access to a consumer's financial account. The term 'personal information' does not include publicly available information that is lawfully made available to the general public from federal, state or local government records." Because the Secretary of State may not release any part of a registered voter's Social Security number, none of the data released would fit within the definition of personal information contained in K.S.A. 2016 Supp. 50-7a01.

containing that information may be released to any person, including persons in the federal government, upon request.²⁰

For the reasons above, we conclude that the Secretary of State is prohibited by Kansas law from releasing the last four digits of a registered voter's Social Security number and also may not release the residence address of any registered voter who has properly requested that his or her address be concealed as allowed by statute. With those exceptions, Kansas law allows the Secretary of State, in his (or her) discretion, to release records containing the full name, date of birth, and party affiliation of a registered voter.

Sincerely,

Derek Schmidt
Kansas Attorney General

Athena E. Andaya
Deputy Attorney General

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²⁰ This information may not be released to a requester who will use it for "commercial purposes." See K.S.A. 2016 Supp. 45-220(c) and K.S.A. 2016 Supp. 45-230. However, nothing in your inquiry suggests that is the purpose of this requester, and K.S.A. 2016 Supp. 45-230(a)(4) contemplates use for political campaign or election purposes.