

HOUSE BILL No. 2010

By Representatives Holscher, Clayton, Curtis, Day, Finney, S. Ruiz, Stogsdill,
Ward, Warfield, Winn and Xu

6-3

1 AN ACT concerning law enforcement; relating to hiring of law
2 enforcement officers; allegations of serious misconduct; relating to law
3 enforcement disciplinary records; subject to open records act;
4 amending K.S.A. 2019 Supp. 45-221 and repealing the existing section.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) All law enforcement agencies in this state shall
8 adopt a detailed, written policy prohibiting the hiring of law enforcement
9 officers with a history of serious misconduct or use of excessive force.

10 (b) Policies adopted pursuant to this section shall be implemented by
11 all Kansas law enforcement agencies prior to July 1, 2021. Such policies
12 shall be public records and be made available for public inspection during
13 normal business hours.

14 (c) The policies adopted pursuant to this section shall include, but not
15 be limited to the prohibition of a law enforcement agency hiring an
16 applicant::

17 (1) Previously employed by such agency if the applicant has been
18 fired by or resigned from such agency during the pendency of an
19 investigation alleging serious misconduct or use of excessive force on the
20 part of the officer; and

21 (2) after receipt of an applicant's files obtained pursuant to K.S.A. 75-
22 4379, and amendments thereto, if such applicant has been fired by or
23 resigned from another law enforcement agency during the pendency of an
24 investigation alleging serious misconduct or excessive force on the part of
25 the officer.

26 Sec. 2. K.S.A. 2019 Supp. 45-221 is hereby amended to read as
27 follows: 45-221. (a) Except to the extent disclosure is otherwise required
28 by law, a public agency shall not be required to disclose:

29 (1) Records the disclosure of which is specifically prohibited or
30 restricted by federal law, state statute or rule of the Kansas supreme court
31 or rule of the senate committee on confirmation oversight relating to
32 information submitted to the committee pursuant to K.S.A. 75-4315d, and
33 amendments thereto, or the disclosure of which is prohibited or restricted
34 pursuant to specific authorization of federal law, state statute or rule of the
35 Kansas supreme court or rule of the senate committee on confirmation

1 oversight relating to information submitted to the committee pursuant to
2 K.S.A. 75-4315d, and amendments thereto, to restrict or prohibit
3 disclosure.

4 (2) Records which are privileged under the rules of evidence, unless
5 the holder of the privilege consents to the disclosure.

6 (3) Medical, psychiatric, psychological or alcoholism or drug
7 dependency treatment records which pertain to identifiable patients.

8 (4) Personnel records, performance ratings or individually identifiable
9 records pertaining to employees or applicants for employment, except that
10 this exemption shall not apply to:

11 (A) The names, positions, salaries or actual compensation
12 employment contracts or employment-related contracts or agreements and
13 lengths of service of officers and employees of public agencies once they
14 are employed as such; and

15 (B) (1) *law enforcement employment and disciplinary records*
16 *alleging serious misconduct or use of excessive force by a law*
17 *enforcement officer, unless disclosure of such records are otherwise*
18 *restricted or prohibited by law. A state or local law enforcement agency or*
19 *governmental entity shall redact personally identifiable information of*
20 *persons other than the law enforcement officer that is the subject of the*
21 *allegation contained in such records.*

22 (5) Information which would reveal the identity of any undercover
23 agent or any informant reporting a specific violation of law.

24 (6) Letters of reference or recommendation pertaining to the character
25 or qualifications of an identifiable individual, except documents relating to
26 the appointment of persons to fill a vacancy in an elected office.

27 (7) Library, archive and museum materials contributed by private
28 persons, to the extent of any limitations imposed as conditions of the
29 contribution.

30 (8) Information which would reveal the identity of an individual who
31 lawfully makes a donation to a public agency, if anonymity of the donor is
32 a condition of the donation, except if the donation is intended for or
33 restricted to providing remuneration or personal tangible benefit to a
34 named public officer or employee.

35 (9) Testing and examination materials, before the test or examination
36 is given or if it is to be given again, or records of individual test or
37 examination scores, other than records which show only passage or failure
38 and not specific scores.

39 (10) Criminal investigation records, except as provided herein. The
40 district court, in an action brought pursuant to K.S.A. 45-222, and
41 amendments thereto, may order disclosure of such records, subject to such
42 conditions as the court may impose, if the court finds that disclosure:

43 (A) Is in the public interest;

1 (B) would not interfere with any prospective law enforcement action,
2 criminal investigation or prosecution;

3 (C) would not reveal the identity of any confidential source or
4 undercover agent;

5 (D) would not reveal confidential investigative techniques or
6 procedures not known to the general public;

7 (E) would not endanger the life or physical safety of any person; and

8 (F) would not reveal the name, address, phone number or any other
9 information which specifically and individually identifies the victim of any
10 sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated,
11 prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes
12 Annotated, and amendments thereto.

13 If a public record is discretionarily closed by a public agency pursuant
14 to this subsection, the record custodian, upon request, shall provide a
15 written citation to the specific provisions of paragraphs (A) through (F)
16 that necessitate closure of that public record.

17 (11) Records of agencies involved in administrative adjudication or
18 civil litigation, compiled in the process of detecting or investigating
19 violations of civil law or administrative rules and regulations, if disclosure
20 would interfere with a prospective administrative adjudication or civil
21 litigation or reveal the identity of a confidential source or undercover
22 agent.

23 (12) Records of emergency or security information or procedures of a
24 public agency, or plans, drawings, specifications or related information for
25 any building or facility which is used for purposes requiring security
26 measures in or around the building or facility or which is used for the
27 generation or transmission of power, water, fuels or communications, if
28 disclosure would jeopardize security of the public agency, building or
29 facility.

30 (13) The contents of appraisals or engineering or feasibility estimates
31 or evaluations made by or for a public agency relative to the acquisition of
32 property, prior to the award of formal contracts therefor.

33 (14) Correspondence between a public agency and a private
34 individual, other than correspondence which is intended to give notice of
35 an action, policy or determination relating to any regulatory, supervisory or
36 enforcement responsibility of the public agency or which is widely
37 distributed to the public by a public agency and is not specifically in
38 response to communications from such a private individual.

39 (15) Records pertaining to employer-employee negotiations, if
40 disclosure would reveal information discussed in a lawful executive
41 session under K.S.A. 75-4319, and amendments thereto.

42 (16) Software programs for electronic data processing and
43 documentation thereof, but each public agency shall maintain a register,

1 open to the public, that describes:

2 (A) The information which the agency maintains on computer
3 facilities; and

4 (B) the form in which the information can be made available using
5 existing computer programs.

6 (17) Applications, financial statements and other information
7 submitted in connection with applications for student financial assistance
8 where financial need is a consideration for the award.

9 (18) Plans, designs, drawings or specifications which are prepared by
10 a person other than an employee of a public agency or records which are
11 the property of a private person.

12 (19) Well samples, logs or surveys which the state corporation
13 commission requires to be filed by persons who have drilled or caused to
14 be drilled, or are drilling or causing to be drilled, holes for the purpose of
15 discovery or production of oil or gas, to the extent that disclosure is
16 limited by rules and regulations of the state corporation commission.

17 (20) Notes, preliminary drafts, research data in the process of
18 analysis, unfunded grant proposals, memoranda, recommendations or
19 other records in which opinions are expressed or policies or actions are
20 proposed, except that this exemption shall not apply when such records are
21 publicly cited or identified in an open meeting or in an agenda of an open
22 meeting.

23 (21) Records of a public agency having legislative powers, which
24 records pertain to proposed legislation or amendments to proposed
25 legislation, except that this exemption shall not apply when such records
26 are:

27 (A) Publicly cited or identified in an open meeting or in an agenda of
28 an open meeting; or

29 (B) distributed to a majority of a quorum of any body which has
30 authority to take action or make recommendations to the public agency
31 with regard to the matters to which such records pertain.

32 (22) Records of a public agency having legislative powers, which
33 records pertain to research prepared for one or more members of such
34 agency, except that this exemption shall not apply when such records are:

35 (A) Publicly cited or identified in an open meeting or in an agenda of
36 an open meeting; or

37 (B) distributed to a majority of a quorum of any body which has
38 authority to take action or make recommendations to the public agency
39 with regard to the matters to which such records pertain.

40 (23) Library patron and circulation records which pertain to
41 identifiable individuals.

42 (24) Records which are compiled for census or research purposes and
43 which pertain to identifiable individuals.

1 (25) Records which represent and constitute the work product of an
2 attorney.

3 (26) Records of a utility or other public service pertaining to
4 individually identifiable residential customers of the utility or service.

5 (27) Specifications for competitive bidding, until the specifications
6 are officially approved by the public agency.

7 (28) Sealed bids and related documents, until a bid is accepted or all
8 bids rejected.

9 (29) Correctional records pertaining to an identifiable inmate or
10 release, except that:

11 (A) The name; photograph and other identifying information;
12 sentence data; parole eligibility date; custody or supervision level;
13 disciplinary record; supervision violations; conditions of supervision,
14 excluding requirements pertaining to mental health or substance abuse
15 counseling; location of facility where incarcerated or location of parole
16 office maintaining supervision and address of a releasee whose crime was
17 committed after the effective date of this act shall be subject to disclosure
18 to any person other than another inmate or releasee, except that the
19 disclosure of the location of an inmate transferred to another state pursuant
20 to the interstate corrections compact shall be at the discretion of the
21 secretary of corrections;

22 (B) the attorney general, law enforcement agencies, counsel for the
23 inmate to whom the record pertains and any county or district attorney
24 shall have access to correctional records to the extent otherwise permitted
25 by law;

26 (C) the information provided to the law enforcement agency pursuant
27 to the sex offender registration act, K.S.A. 22-4901 et seq., and
28 amendments thereto, shall be subject to disclosure to any person, except
29 that the name, address, telephone number or any other information which
30 specifically and individually identifies the victim of any offender required
31 to register as provided by the Kansas offender registration act, K.S.A. 22-
32 4901 et seq., and amendments thereto, shall not be disclosed; and

33 (D) records of the department of corrections regarding the financial
34 assets of an offender in the custody of the secretary of corrections shall be
35 subject to disclosure to the victim, or such victim's family, of the crime for
36 which the inmate is in custody as set forth in an order of restitution by the
37 sentencing court.

38 (30) Public records containing information of a personal nature where
39 the public disclosure thereof would constitute a clearly unwarranted
40 invasion of personal privacy.

41 (31) Public records pertaining to prospective location of a business or
42 industry where no previous public disclosure has been made of the
43 business' or industry's interest in locating in, relocating within or

1 expanding within the state. This exception shall not include those records
2 pertaining to application of agencies for permits or licenses necessary to
3 do business or to expand business operations within this state, except as
4 otherwise provided by law.

5 (32) Engineering and architectural estimates made by or for any
6 public agency relative to public improvements.

7 (33) Financial information submitted by contractors in qualification
8 statements to any public agency.

9 (34) Records involved in the obtaining and processing of intellectual
10 property rights that are expected to be, wholly or partially vested in or
11 owned by a state educational institution, as defined in K.S.A. 76-711, and
12 amendments thereto, or an assignee of the institution organized and
13 existing for the benefit of the institution.

14 (35) Any report or record which is made pursuant to K.S.A. 65-4922,
15 65-4923 or 65-4924, and amendments thereto, and which is privileged
16 pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

17 (36) Information which would reveal the precise location of an
18 archeological site.

19 (37) Any financial data or traffic information from a railroad
20 company, to a public agency, concerning the sale, lease or rehabilitation of
21 the railroad's property in Kansas.

22 (38) Risk-based capital reports, risk-based capital plans and
23 corrective orders including the working papers and the results of any
24 analysis filed with the commissioner of insurance in accordance with
25 K.S.A. 40-2c20 and 40-2d20, and amendments thereto.

26 (39) Memoranda and related materials required to be used to support
27 the annual actuarial opinions submitted pursuant to K.S.A. 40-409(b), and
28 amendments thereto.

29 (40) Disclosure reports filed with the commissioner of insurance
30 under K.S.A. 40-2,156(a), and amendments thereto.

31 (41) All financial analysis ratios and examination synopses
32 concerning insurance companies that are submitted to the commissioner by
33 the national association of insurance commissioners' insurance regulatory
34 information system.

35 (42) Any records the disclosure of which is restricted or prohibited by
36 a tribal-state gaming compact.

37 (43) Market research, market plans, business plans and the terms and
38 conditions of managed care or other third-party contracts, developed or
39 entered into by the university of Kansas medical center in the operation
40 and management of the university hospital which the chancellor of the
41 university of Kansas or the chancellor's designee determines would give an
42 unfair advantage to competitors of the university of Kansas medical center.

43 (44) The amount of franchise tax paid to the secretary of revenue or

1 the secretary of state by domestic corporations, foreign corporations,
2 domestic limited liability companies, foreign limited liability companies,
3 domestic limited partnership, foreign limited partnership, domestic limited
4 liability partnerships and foreign limited liability partnerships.

5 (45) Records, other than criminal investigation records, the disclosure
6 of which would pose a substantial likelihood of revealing security
7 measures that protect: (A) Systems, facilities or equipment used in the
8 production, transmission or distribution of energy, water or
9 communications services; (B) transportation and sewer or wastewater
10 treatment systems, facilities or equipment; or (C) private property or
11 persons, if the records are submitted to the agency. For purposes of this
12 paragraph, security means measures that protect against criminal acts
13 intended to intimidate or coerce the civilian population, influence
14 government policy by intimidation or coercion or to affect the operation of
15 government by disruption of public services, mass destruction,
16 assassination or kidnapping. Security measures include, but are not limited
17 to, intelligence information, tactical plans, resource deployment and
18 vulnerability assessments.

19 (46) Any information or material received by the register of deeds of
20 a county from military discharge papers, DD Form 214. Such papers shall
21 be disclosed: To the military dischargee; to such dischargee's immediate
22 family members and lineal descendants; to such dischargee's heirs, agents
23 or assigns; to the licensed funeral director who has custody of the body of
24 the deceased dischargee; when required by a department or agency of the
25 federal or state government or a political subdivision thereof; when the
26 form is required to perfect the claim of military service or honorable
27 discharge or a claim of a dependent of the dischargee; and upon the written
28 approval of the commissioner of veterans affairs, to a person conducting
29 research.

30 (47) Information that would reveal the location of a shelter or a
31 safehouse or similar place where persons are provided protection from
32 abuse or the name, address, location or other contact information of
33 alleged victims of stalking, domestic violence or sexual assault.

34 (48) Policy information provided by an insurance carrier in
35 accordance with K.S.A. 44-532(h)(1), and amendments thereto. This
36 exemption shall not be construed to preclude access to an individual
37 employer's record for the purpose of verification of insurance coverage or
38 to the department of labor for their business purposes.

39 (49) An individual's e-mail address, cell phone number and other
40 contact information which has been given to the public agency for the
41 purpose of public agency notifications or communications which are
42 widely distributed to the public.

43 (50) Information provided by providers to the local collection point

1 administrator or to the 911 coordinating council pursuant to the Kansas
2 911 act, and amendments thereto, upon request of the party submitting
3 such records.

4 (51) Records of a public agency on a public website which are
5 searchable by a keyword search and identify the home address or home
6 ownership of a law enforcement officer as defined in K.S.A. 2019 Supp.
7 21-5111, and amendments thereto, parole officer, probation officer, court
8 services officer or community correctional services officer. Such
9 individual officer shall file with the custodian of such record a request to
10 have such officer's identifying information restricted from public access on
11 such public website. Within 10 business days of receipt of such requests,
12 the public agency shall restrict such officer's identifying information from
13 such public access. Such restriction shall expire after five years and such
14 officer may file with the custodian of such record a new request for
15 restriction at any time.

16 (52) Records of a public agency on a public website which are
17 searchable by a keyword search and identify the home address or home
18 ownership of a federal judge, a justice of the supreme court, a judge of the
19 court of appeals, a district judge, a district magistrate judge, a municipal
20 judge, the United States attorney for the district of Kansas, an assistant
21 United States attorney, a special assistant United States attorney, the
22 attorney general, an assistant attorney general, a special assistant attorney
23 general, a county attorney, an assistant county attorney, a special assistant
24 county attorney, a district attorney, an assistant district attorney, a special
25 assistant district attorney, a city attorney, an assistant city attorney or a
26 special assistant city attorney. Such person shall file with the custodian of
27 such record a request to have such person's identifying information
28 restricted from public access on such public website. Within 10 business
29 days of receipt of such requests, the public agency shall restrict such
30 person's identifying information from such public access. Such restriction
31 shall expire after five years and such person may file with the custodian of
32 such record a new request for restriction at any time.

33 (53) Records of a public agency that would disclose the name, home
34 address, zip code, e-mail address, phone number or cell phone number or
35 other contact information for any person licensed to carry concealed
36 handguns or of any person who enrolled in or completed any weapons
37 training in order to be licensed or has made application for such license
38 under the personal and family protection act, K.S.A. 75-7c01 et seq., and
39 amendments thereto, shall not be disclosed unless otherwise required by
40 law.

41 (54) Records of a utility concerning information about cyber security
42 threats, attacks or general attempts to attack utility operations provided to
43 law enforcement agencies, the state corporation commission, the federal

1 energy regulatory commission, the department of energy, the southwest
2 power pool, the North American electric reliability corporation, the federal
3 communications commission or any other federal, state or regional
4 organization that has a responsibility for the safeguarding of
5 telecommunications, electric, potable water, waste water disposal or
6 treatment, motor fuel or natural gas energy supply systems.

7 (55) Records of a public agency containing information or reports
8 obtained and prepared by the office of the state bank commissioner in the
9 course of licensing or examining a person engaged in money transmission
10 business pursuant to K.S.A. 9-508 et seq., and amendments thereto, shall
11 not be disclosed except pursuant to K.S.A. 9-513c, and amendments
12 thereto, or unless otherwise required by law.

13 (b) Except to the extent disclosure is otherwise required by law or as
14 appropriate during the course of an administrative proceeding or on appeal
15 from agency action, a public agency or officer shall not disclose financial
16 information of a taxpayer which may be required or requested by a county
17 appraiser or the director of property valuation to assist in the determination
18 of the value of the taxpayer's property for ad valorem taxation purposes; or
19 any financial information of a personal nature required or requested by a
20 public agency or officer, including a name, job description or title
21 revealing the salary or other compensation of officers, employees or
22 applicants for employment with a firm, corporation or agency, except a
23 public agency. Nothing contained herein shall be construed to prohibit the
24 publication of statistics, so classified as to prevent identification of
25 particular reports or returns and the items thereof.

26 (c) As used in this section, the term "cited or identified" shall not
27 include a request to an employee of a public agency that a document be
28 prepared.

29 (d) If a public record contains material which is not subject to
30 disclosure pursuant to this act, the public agency shall separate or delete
31 such material and make available to the requester that material in the
32 public record which is subject to disclosure pursuant to this act. If a public
33 record is not subject to disclosure because it pertains to an identifiable
34 individual, the public agency shall delete the identifying portions of the
35 record and make available to the requester any remaining portions which
36 are subject to disclosure pursuant to this act, unless the request is for a
37 record pertaining to a specific individual or to such a limited group of
38 individuals that the individuals' identities are reasonably ascertainable, the
39 public agency shall not be required to disclose those portions of the record
40 which pertain to such individual or individuals.

41 (e) The provisions of this section shall not be construed to exempt
42 from public disclosure statistical information not descriptive of any
43 identifiable person.

1 (f) Notwithstanding the provisions of subsection (a), any public
2 record which has been in existence more than 70 years shall be open for
3 inspection by any person unless disclosure of the record is specifically
4 prohibited or restricted by federal law, state statute or rule of the Kansas
5 supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and
6 amendments thereto.

7 (g) Any confidential records or information relating to security
8 measures provided or received under the provisions of subsection (a)(45)
9 shall not be subject to subpoena, discovery or other demand in any
10 administrative, criminal or civil action.

11 Sec. 3. K.S.A. 2019 Supp. 45-221 is hereby repealed.

12 Sec. 4. This act shall take effect and be in force from and after its
13 publication in the statute book.