

*{As Amended by Senate Committee of the Whole}*

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*As Amended by Senate Committee*

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**As Amended by House Committee**

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*Session of 2013*

## **HOUSE BILL No. 2128**

By Representative Sloan

1-29

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1 AN ACT concerning the open records act, exceptions; amending K.S.A.  
2 2012 Supp. 45-221 and repealing the existing section; also repealing  
3 K.S.A. 2012 Supp. 45-221j and 45-221k.  
4

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

6 Section 1. K.S.A. 2012 Supp. 45-221 is hereby amended to read as  
7 follows: 45-221. (a) Except to the extent disclosure is otherwise required  
8 by law, a public agency shall not be required to disclose:

9 (1) Records the disclosure of which is specifically prohibited or  
10 restricted by federal law, state statute or rule of the Kansas supreme court  
11 or rule of the senate committee on confirmation oversight relating to  
12 information submitted to the committee pursuant to K.S.A. 2012 Supp. 75-  
13 4315d, and amendments thereto, or the disclosure of which is prohibited or  
14 restricted pursuant to specific authorization of federal law, state statute or  
15 rule of the Kansas supreme court or rule of the senate committee on  
16 confirmation oversight relating to information submitted to the committee  
17 pursuant to K.S.A. 2012 Supp. 75-4315d, and amendments thereto, to  
18 restrict or prohibit disclosure.

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

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

23 (4) Personnel records, performance ratings or individually identifiable  
24 records pertaining to employees or applicants for employment, except that  
25 this exemption shall not apply to the names, positions, salaries or actual  
26 compensation employment contracts or employment-related contracts or  
27 agreements and lengths of service of officers and employees of public  
28 agencies once they are employed as such.

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

31 (6) Letters of reference or recommendation pertaining to the character  
32 or qualifications of an identifiable individual, except documents relating to

1 the appointment of persons to fill a vacancy in an elected office.

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

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

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

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

18 (A) Is in the public interest;

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

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

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

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

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

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

35 (11) Records of agencies involved in administrative adjudication or  
36 civil litigation, compiled in the process of detecting or investigating  
37 violations of civil law or administrative rules and regulations, if disclosure  
38 would interfere with a prospective administrative adjudication or civil  
39 litigation or reveal the identity of a confidential source or undercover  
40 agent.

41 (12) Records of emergency or security information or procedures of a  
42 public agency, or plans, drawings, specifications or related information for  
43 any building or facility which is used for purposes requiring security

1 measures in or around the building or facility or which is used for the  
2 generation or transmission of power, water, fuels or communications, if  
3 disclosure would jeopardize security of the public agency, building or  
4 facility.

5 (13) The contents of appraisals or engineering or feasibility estimates  
6 or evaluations made by or for a public agency relative to the acquisition-~~or~~  
7 *disposal* of property, prior to the award of formal contracts therefor.

8 (14) Correspondence between a public agency and a private  
9 individual, other than correspondence which is intended to give notice of  
10 an action, policy or determination relating to any regulatory, supervisory or  
11 enforcement responsibility of the public agency or which is widely  
12 distributed to the public by a public agency and is not specifically in  
13 response to communications from such a private individual.

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

17 (16) Software programs for electronic data processing and  
18 documentation thereof, but each public agency shall maintain a register,  
19 open to the public, that describes:

20 (A) The information which the agency maintains on computer  
21 facilities; and

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

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

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

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

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

41 (21) Records of a public agency having legislative powers, which  
42 records pertain to proposed legislation or amendments to proposed  
43 legislation, except that this exemption shall not apply when such records

1 are:

2 (A) Publicly cited or identified in an open meeting or in an agenda of  
3 an open meeting; or

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

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

10 (A) Publicly cited or identified in an open meeting or in an agenda of  
11 an open meeting; or

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

15 (23) Library patron and circulation records which pertain to  
16 identifiable individuals.

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

19 (25) Records which represent and constitute the work product of an  
20 attorney.

21 (26) Records of a utility or other public service pertaining to  
22 individually identifiable residential customers of the utility or service,  
23 ~~except that usage and cost information concerning billings for specific~~  
24 ~~individual customers named addresses identified by the requester shall be~~  
25 ~~subject to disclosure as provided by this act.~~

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

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

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

32 (A) The name; photograph and other identifying information;  
33 sentence data; parole eligibility date; custody or supervision level;  
34 disciplinary record; supervision violations; conditions of supervision,  
35 excluding requirements pertaining to mental health or substance abuse  
36 counseling; location of facility where incarcerated or location of parole  
37 office maintaining supervision and address of a releasee whose crime was  
38 committed after the effective date of this act shall be subject to disclosure  
39 to any person other than another inmate or releasee, except that the  
40 disclosure of the location of an inmate transferred to another state pursuant  
41 to the interstate corrections compact shall be at the discretion of the  
42 secretary of corrections;

43 (B) ~~the ombudsman of corrections;~~ the attorney general, law

1 enforcement agencies, counsel for the inmate to whom the record pertains  
2 and any county or district attorney shall have access to correctional records  
3 to the extent otherwise permitted by law;

4 (C) the information provided to the law enforcement agency pursuant  
5 to the sex offender registration act, K.S.A. 22-4901 et seq., and  
6 amendments thereto, shall be subject to disclosure to any person, except  
7 that the name, address, telephone number or any other information which  
8 specifically and individually identifies the victim of any offender required  
9 to register as provided by the Kansas offender registration act, K.S.A. 22-  
10 4901 et seq., and amendments thereto, shall not be disclosed; and

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

16 (30) Public records containing information of a personal nature where  
17 the public disclosure thereof would constitute a clearly unwarranted  
18 invasion of personal privacy.

19 (31) Public records pertaining to prospective location of a business or  
20 industry where no previous public disclosure has been made of the  
21 business' or industry's interest in locating in, relocating within or  
22 expanding within the state. This exception shall not include those records  
23 pertaining to application of agencies for permits or licenses necessary to  
24 do business or to expand business operations within this state, except as  
25 otherwise provided by law.

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

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

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

35 (35) Any report or record which is made pursuant to K.S.A. 65-4922,  
36 65-4923 or 65-4924, and amendments thereto, and which is privileged  
37 pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

38 (36) Information which would reveal the precise location of an  
39 archeological site.

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

43 (38) Risk-based capital reports, risk-based capital plans and

1 corrective orders including the working papers and the results of any  
2 analysis filed with the commissioner of insurance in accordance with  
3 K.S.A. 40-2c20 and 40-2d20, and amendments thereto.

4 (39) Memoranda and related materials required to be used to support  
5 the annual actuarial opinions submitted pursuant to subsection (b) of  
6 K.S.A. 40-409, and amendments thereto.

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

9 (41) All financial analysis ratios and examination synopses  
10 concerning insurance companies that are submitted to the commissioner by  
11 the national association of insurance commissioners' insurance regulatory  
12 information system.

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

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

21 (44) The amount of franchise tax paid to the secretary of revenue or  
22 the secretary of state by domestic corporations, foreign corporations,  
23 domestic limited liability companies, foreign limited liability companies,  
24 domestic limited partnership, foreign limited partnership, domestic limited  
25 liability partnerships and foreign limited liability partnerships.

26 (45) Records, other than criminal investigation records, the disclosure  
27 of which would pose a substantial likelihood of revealing security  
28 measures that protect: (A) Systems, facilities or equipment used in the  
29 production, transmission or distribution of energy, water or  
30 communications services; (B) transportation and sewer or wastewater  
31 treatment systems, facilities or equipment; or (C) private property or  
32 persons, if the records are submitted to the agency. For purposes of this  
33 paragraph, security means measures that protect against criminal acts  
34 intended to intimidate or coerce the civilian population, influence  
35 government policy by intimidation or coercion or to affect the operation of  
36 government by disruption of public services, mass destruction,  
37 assassination or kidnapping. Security measures include, but are not limited  
38 to, intelligence information, tactical plans, resource deployment and  
39 vulnerability assessments.

40 (46) Any information or material received by the register of deeds of  
41 a county from military discharge papers, DD Form 214. Such papers shall  
42 be disclosed: To the military dischargee; to such dischargee's immediate  
43 family members and lineal descendants; to such dischargee's heirs, agents

1 or assigns; to the licensed funeral director who has custody of the body of  
2 the deceased dischargee; when required by a department or agency of the  
3 federal or state government or a political subdivision thereof; when the  
4 form is required to perfect the claim of military service or honorable  
5 discharge or a claim of a dependent of the dischargee; and upon the written  
6 approval of the commissioner of veterans affairs, to a person conducting  
7 research.

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

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

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

21 (50) Information provided by providers to the local collection point  
22 administrator or to the 911 coordinating council pursuant to the Kansas  
23 911 act, and amendments thereto, upon request of the party submitting  
24 such records.

25 (51) Records of a public agency which identify the home address or  
26 home ownership of a law enforcement officer as defined in K.S.A. 2012  
27 Supp. 21-5111, and amendments thereto, parole officer, probation officer,  
28 court services officer or community correctional services officer. The  
29 agency head of such law enforcement office, parole office, probation  
30 office, court services office or community correctional services office or  
31 such individual officer shall file with the custodian of such record a  
32 request to have such officer's identifying information removed from public  
33 access. Within seven days of receipt of such requests, the public agency  
34 shall remove such officer's identifying information from such public  
35 access.

36 (52) Records of a public agency which identify the home address or  
37 home ownership of a federal judge, a justice of the supreme court, a judge  
38 of the court of appeals, a district judge, a district magistrate judge, the  
39 United States attorney for the district of Kansas, an assistant United States  
40 attorney, the attorney general, an assistant attorney general, a district  
41 attorney or county attorney or an assistant district attorney or assistant  
42 county attorney. Such person or such person's employer shall file with the  
43 custodian of such record a request to have such person's identifying

1 information removed from public access. Within seven days of receipt of  
2 such requests, the public agency shall remove such person's identifying  
3 information from such public access.

4 (53) *Records of a utility concerning information about cyber security*  
5 *threats, attacks or general attempts to attack utility operations provided to*  
6 *law enforcement agencies, the state corporation commission, the federal*  
7 *energy regulatory commission, the department of energy, the southwest*  
8 *power pool, the North American electric reliability corporation, the*  
9 *federal communications commission or any other federal, state or*  
10 *regional organization that has a responsibility for the safeguarding of*  
11 *telecommunications, electric, **potable water, waste water disposal {or***  
12 ***treatment}, motor fuel or natural gas energy supply systems.***

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. 2. K.S.A. 2012 Supp. 45-221, 45-221j and 45-221k are hereby  
12 repealed.

13 Sec. 3. This act shall take effect and be in force from and after its  
14 publication in the statute book.