



# KANSAS OPEN RECORDS ACT CITY OF INDEPENDENCE

Information about the Kansas Open Records Act and  
the City of Independence Process

October 17, 2018

## **Kansas Open Records Act - City of Independence**

The Independence Daily Reporter has graciously offered this editorial space as a forum for providing meaningful, factual information related to City of Independence operations, policies and procedures. This particular column is dedicated to information about the Kansas Open Records Act (KORA), which has been the subject of debate across multiple community channels, including letters to the editor and paid advertisements in this publication.

The topic seems to have inspired an insatiable curiosity among a few citizens, with, unfortunately, a less than accurate or complete understanding. Here, I wanted to provide accurate information so that all citizens have equal access and opportunity to be informed.

### **The history and purpose of KORA**

First enacted by the Kansas Legislature in 1984 and since amended several times, KORA's underlying policy is that "all public records shall be open for inspection" subject to procedures set forth in both State Statutes and City Ordinances while at the same time not creating "excessive disruption of the agency's essential functions."

### **Procedure for requesting records**

The general procedure to request a copy or inspection of a public record under KORA is as follows:

1. The requestor makes a written request containing the requestor's name, address and a description of the records sought to be obtained. The City provides a form for convenience but use of the City's form is not required.
2. The City then has three (3) business days following the date the request is received to respond to the request.
3. Depending on the request made, the City's initial response could be to provide an estimate of the cost to produce the records, or to seek clarification of the request, or to simply provide the records.
4. The City is entitled to require pre-payment of the cost estimate before conducting the search for the records requested. Once the requestor receives the cost estimate, the requestor then decides whether to proceed with the request, and if so, pays the City the estimate.
5. After payment is received, the City staff will conduct the search for the records, obtain the records and produce the records for the requestor.
6. If the cost estimate was either too high or too low, a reconciliation will be made at the time the records are produced.

## **Nuances of the process**

As with any statutory procedure, as long as human beings are involved, there will be room for disagreement and differences of opinion, and the City's experience with its KORA requestors is no exception. One common complaint is that the City does not respond within three (3) business days. The state statute specifically states that the City must respond "not later than the end of the third business day following the date that the request is received." Quoting the office of the Kansas Attorney General, this has always been interpreted as meaning that the date the KORA request is received is the "zero" day, and then the City would have three (3) days following that in which to make its initial response, which is generally providing the requestor an estimate or seeking clarification of the request.

Many times, the information requested is not contained in a document. KORA does not require the City to create a document for a requestor. Either the document exists, or it does not.

Often, the requested document contains personal or protected information which need not be disclosed. An example would be an employee's date of birth or social security number. In such a case, the City "redacts" the document by deleting the protected information and then provides the balance of the document to the requestor. Depending on the number of documents requested, the redaction process can be very time consuming and, as a result, more expensive to the requestor.

There are 55 exceptions to disclosure containing KORA. As can be expected, there is room for disagreement on interpretation of these 55 exceptions.

In the case of the City, over the last three years, certain requestors have filed a total of 19 written complaints with the office of the Kansas Attorney General whose job it is to enforce KORA. One of these complaints (the first one made), was widely publicized and was found to be valid, having to do with an evaluation form concerning former city manager Micky Webb. The remaining 18 complaints were all denied and received little or no media publicity. Of the total complaints, 16 were filed by the same individual. The denial of a complaint can be interpreted as confirmation that the City staff is doing its job appropriately.

## **Number of requests received by the City of Independence**

From January 2017 to October 2018, the City has received 65 written KORA requests, which included a total of 159 separate records. These came from 29 different requestors. This total includes 32 requests from the same citizen, accounting for 110 of the 159 records.

## **Costs**

As mentioned, responding to KORA requests is a time-consuming, labor-intensive process for City staff. KORA permits the City to recoup the cost of making copies and for staff time

dealing with KORA requests. The City has adopted an ordinance setting forth a procedure to calculate staff time and include that in the cost. There is also a per-page copy charge of 25¢ for paper copies, which is specifically allowed by KORA. There is no copy charge assessed for records transmitted via electronic means, such as email.

Often, a requestor does not realize that the information requested is already posted on the City's website, such as a request for the minutes of a meeting. So before making a written KORA request, you might check the City's website to see if the information being requested is already available to you.

### **We're doing our best**

The City staff is made up of regular people just like you or me. When a KORA request is received, it generally is first handled by the office of the City Clerk and then possibly passed on to other staff members who may know more about the document or documents being requested. Almost all documents are electronically stored by scanning them into the City's computer system. There has been a turnover in the office of City Clerk in recent years. Each City Clerk has his or her own style and may respond in a slightly different manner to a requestor, but in general, City staff follows procedures and attempts to maintain consistency.

Despite our genuine attempts to consistently follow policy and meet all requests, it is impossible to satisfy everyone. Some citizens have chosen to levy an ongoing barrage of criticism of not only the City's handling of KORA issues, but virtually all aspects of City operations. While dealing with this circumstance day in and day out is exhausting, it will not deter or distract the City from its mission to provide excellent service to all citizens.

Jeff Chubb                      City Attorney

Craig Whitehead              City Manager