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STATE OF KANSAS

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Testimony on HB2134 (Oral Neutral)
Senate Judiciary Committee
Submitted: February 28, 2025

Chair Warren and members of the Committee:

This testimony addresses two areas relevant to any legislation on the Kansas Open Records Act.

First, most KORA requests to government agencies are addressed promptly at reasonable cost. There are, however, two categories of problems that occur when responding to KORA requests.

One problem is an agency charging unreasonably high fees for producing responsive public records. This bill seems directed at aspects of that problem.

The Secretary of State's concern is the other problem – the weaponization of KORA requests as an intentional tool to disrupt agency operations. It has become a national phenomenon that election offices, often minimally staffed, are inundated with open record requests intended to disrupt their operations.¹ Once a tool of journalists and concerned citizens to hold government accountable, open records requests are increasingly being used to disrupt public business.

An example was a vague and overbroad request our office received for 'every e-mail to, from, or that mentions a particular senior staff member over a five-year period.' Over 66,000 e-mails were responsive, many with attachments, and would require an individualized review for KORA exemptions. Providing a detailed cost and time estimate for the production resulted in the request being dropped.

Second, we bring to the committee's notice that in some cases the legislature has provided special provisions for producing certain public records. These specific provisions supersede the general KORA statutes. For example, with the Secretary of State:

¹ Just a scattering of news reports on the phenomena: <https://www.texastribune.org/2023/11/29/weaponized-openrecords-texas-government-transparency/>; <https://www.cnn.com/2022/09/21/politics/public-records-requests-trumpsupporters/index.html>; <https://www.theguardian.com/us-news/2023/dec/10/georgia-election-records-requests-2024donald-trump>; <https://www.pennlive.com/news/2022/09/election-offices-challenged-by-surge-of-voting-recordrequests.html>; <https://www.nbcnews.com/politics/elections/amateur-fraud-hunters-bury-election-officials-public-recordsrequests-rcna15432>; <https://news.wosu.org/politics-government/2022-09-08/ohio-election-boards-inundated-with-2020election-records-requests-before-theyre-destroyed>

1. The Business Services Division handles tens of thousands of record requests each year. Most of the records are online, directly available to the requestor without staff involvement, and no fee is charged unless a certified version of the record is sought with a statutorily set fee. Several hundred requests are made for paper records, and a fee set in statute is charged.

2. Elections Division handles about 75 requests a year for voter registration database records, for which a set standardize fee is charged, set in statute.

3. The other hundreds of requests a year are individually handled by one staff person. In the last 6 years the agency has charged and received payment from only two requestors– law firms using KORA to get around discovery limitations.

Respectfully

/Clayton Barker

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