

Open Records and Open Meetings; HB 2134

HB 2134 limits the fees charged by a public agency in response to Kansas Open Records Act (KORA) requests and allows a requester to appeal a fee's reasonableness to the Secretary of Administration (Secretary) if the responding public agency is within the Executive Branch.

The bill exempts disclosure of certain closed investigations, changes the date for county or district attorneys to report complaints regarding KORA and the Kansas Open Meetings Act (KOMA), and amends provisions concerning public meetings in KOMA.

Fees for Public Records

The bill amends law prohibiting an agency from charging a fee in excess of the actual cost of furnishing copies of requested records. The bill specifies that actual costs include the cost to review requests and redact the requested records. The bill prohibits any incidental costs incurred by the public agency not attributable to furnishing the requested records from being included.

If the public agency incurs costs for staff time to provide access to or furnish copies of public records, the bill requires the agency to use in good faith the lowest cost category of staff reasonably necessary to provide such access or copies. The bill requires the charges for staff time to be based on the employee's salary or hourly wage, not including the cost of employee benefits.

The bill requires executive agency heads to establish fees for access to or for copies of the agency records.

Cost Estimates

The bill requires a public agency to make reasonable efforts to contact the requester and engage in interactive communication about mitigating request costs when the staff time needed to respond would exceed five hours or the estimated actual cost for staff time exceeds \$200.

If the public agency has made reasonable efforts to contact the requester, and the requester fails to respond by the end of the third business day, the bill considers the request to be withdrawn until a subsequent contact has been made by the requester to the agency. "Reasonable efforts" means contacting the requester through the means of communication the requester provided as their preferred method.

The bill requires the public agency, upon request of the person requesting access to or copies of public records under KORA, to provide an itemized statement of costs incurred by the public agency and charged to the requester. The statement is required to include, but would not be limited to, the hourly rates for each employee involved in making the records available, and an itemized list of any other fees charged to provide access to or copies of the requested records.

Appeals

Under continuing law, persons who believe a KORA request fee is unreasonable may appeal the estimate to the Secretary of Administration. The bill clarifies that such appeals apply only to records within the Executive Branch.

Certain Records Not Subject to Disclosure

The bill amends law concerning records that a public agency is not required to disclose under KORA to exempt the disclosure of formally closed investigations of violations of civil law or administrative rules and regulations when no violations were found.

The bill exempts records of a public agency that contain material that is obscene, as defined by the Kansas Criminal Code.

Reports of KORA and KOMA Complaints

The bill changes the date from January 15 to October 15 of each year by which the county or district attorney of each county must report to the Attorney General all KORA and KOMA complaints received during the previous fiscal year.

Changes Applicable to Public Meetings

Subordinate Groups Subject to KOMA

The bill provides that whenever a majority of a subcommittee or other subordinate group created by a public body or agency meets, such subcommittee or group meeting will be considered an open meeting subject to KOMA.

A private entity is considered a subordinate group of a legislative or administrative body of the State or a political and taxing subdivision only if the entity is under the direct or indirect control of such body.

Livestreaming

The bill provides that a public body or agency that voluntarily elects to livestream a meeting must ensure that all aspects of the meeting are available through the selected medium for the public to observe. The bill specifies that an unintentional technological failure or an action taken by the provider of the selected medium that disrupts or prevents the livestream will not constitute a KOMA violation under the bill.