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MEMORANDUM

To: Committee on Judiciary
From: Katherine McBride, Assistant Revisor
Date: February 13, 2012
Subject: Kansas Open Records Act (KORA)

In recent years, the Legislature has undertaken a comprehensive review of the Kansas Open Records Act (KORA) in order to determine if any statutory exceptions to the law are unnecessary and could be discontinued. Currently, there are 8 statutory exceptions to the KORA that are scheduled for expiration in 2012.

K.S.A. 45-229 provides that all exceptions to disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and any new exception created by the legislature or substantial amendment to an exception, shall expire five years after creation or amendment, unless the legislature acts to continue the exception. In the year prior to the expiration, the Revisor of Statutes is required to certify the language and citation of each exception to the Speaker of the House of Representatives and the President of the Senate.

Subsection (h) further requires the legislature to:

“(1) ...review the exception before its scheduled expiration and consider as part of the review process the following:

- (A) What specific records are affected by the exception;
 - (B) whom does the exception uniquely affect, as opposed to the general public;
 - (C) what is the identifiable public purpose or goal of the exception;
 - (D) whether the information contained in the records may be obtained readily by alternative means and how it may be obtained;
- (2) An exception may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exception and if the exception:
- (A) Allows the effective and efficient administration of a governmental program, which administration would be significantly impaired without the exception;
 - (B) protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted

damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. Only information that would identify the individuals may be excepted under this paragraph; or

(C) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(3) Records made before the date of the expiration of an exception shall be subject to disclosure as otherwise provided by law. In deciding whether the records shall be made public, the legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exception of the type specified in paragraph (2)(B) or (2)(C) of this subsection (h) would occur if the records were made public.”

Attachment A lists 8 statutory exceptions to the Kansas Open Records Act that are scheduled for expiration in 2012 and Attachment B provides a summary of each section.

ATTACHMENT A

OPEN RECORDS REVIEW – SUBSTANTIALLY AMENDED AND NEW
EXCEPTIONS
2007 LEGISLATIVE SESSION

RE: K.S.A. 45-229
Certified for Calendar Year 2011
Exceptions Expire July 1, 2012

Substantially Amended Exception

21-2511	DNA records
38-2313	Revised juvenile justice code
65-516	Child placement agencies

New Exceptions

12-5711	Fort Scott/Bourbon county riverfront authority
74-8745	State lottery information
74-8752	State lottery inspections
74-8772	Kansas racing and gaming commission
75-7427	Inspector general

New Exceptions – Expiration by Separate Statute

None

ATTACHMENT B

KANSAS OPEN RECORDS ACT EXCEPTIONS SUMMARY - 2011

Section	Who exception covers (provides protection to):	Government program affected:	Type of information excepted:
12-5711	Fort Scott/Bourbon County Riverfront Board	Fort Scott/Bourbon County Riverfront Authority	Documents and records kept or prepared by the board for use in contract negotiations or civil proceeds to which the authority is a party
21-2511	Certain convicted adults or adjudicated juvenile offenders	Arresting, charging or custodial law enforcement agency; Kansas bureau of investigation	DNA records obtained by law enforcement and maintained by the Kansas bureau of investigation
38-2313	Juvenciles taken into custody that are fingerprinted or photographed	Juvenile detention and correctional facilities; state or federal repositories; juvenile justice agency	Fingerprints and photographs of juveniles
65-516	A person maintaining a child care facility; volunteers or employees of child care facilities	Department of health and environment; staff persons of child placement agencies; social and rehabilitation services; juvenile justice authority; courts	Criminal history information of persons maintaining child care facilities and volunteers or employees of child care facilities
74-8745	Person who has entered into a major procurement contract with the Kansas lottery or Kansas racing and gaming commission	Kansas lottery; Kansas racing and gaming commission	Information and data relative to finances, earnings or revenue of vendors Information and data pertaining to a vendor's criminal record, family and background

ATTACHMENT B

<p>74-8752</p>	<p>Lottery gaming facility manager; racetrack gaming facility manager</p>	<p>Kansas lottery; Kansas racing and gaming commission</p>	<p>Books, papers, memoranda of any business involved in gaming machines Subpoenaed books, papers records or memoranda of lottery gaming or racetrack gaming facility managers Annual audit of operations of each lottery gaming facility and ancillary lottery gaming facility operations and each racetrack gaming facility as determined by the commission</p>
<p>74-8772</p>	<p>Lottery gaming facility manager; racetrack gaming facility manager</p>	<p>Kansas lottery; Kansas racing and gaming commission</p>	<p>Reported information about any lottery gaming facility managers or racetrack gaming facility managers and its employees, vendors and finances; reported, audited financial information of lottery gaming and racetrack gaming facility managers</p>
<p>75-7427</p>	<p>Persons making reports about fraud, waste, abuse or illegal acts in programs administered by the department of health and environment</p>	<p>Office of inspector general of the department of health and environment</p>	<p>Identities of persons reporting, content of reports</p>