



**OPEN RECORDS  
REQUESTS**

**POLICIES AND  
PROCEDURES**

# GENERAL OVERVIEW

## **OPEN RECORDS STATE OF KANSAS/OLATHE**

The Kansas Open Records Act is also referred to as KORA. The commentary on the next few pages does not include the Kansas Statutory Annotation sections, nor does it mention all the Kansas Attorney General opinion citations. If that information is desired, contact the City Clerk or City Attorney's Office for assistance.

### Purpose

The purpose of KORA is that "public records shall be open for inspection by any person unless otherwise provided, and this act shall be liberally construed and applied to promote such policy."

### Records

Kansas Statute Annotated (K.S.A) 45-215 et. seq. governs the KORA. The act applies to public records, which are defined as "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency."



This statute concerns more than just paper copies or written information. Any recorded information regardless of form or characteristics means that public records are not restricted to written records. Computer data, photos, and many other documents are considered records.



Records not yet in existence are not subject to the Kansas Open Records Act. Any requests received indicating a standing request for records or "records as they become available" are not enforceable.



One particular note – the Kansas Open Records Act does not require that a record be created in order to respond to requests or in order to answer questions asking for "information."

### Inspection

A public agency is the state or any political or taxing subdivision, or any office, officer, or agency thereof, or any other entity, receiving or expending and supported in whole or part by public funds.

The public has the right to inspect and make or obtain copies of records. Unless a record is closed under a specific legal authority, all records are open for inspection. Any person may make copies of a public record. However, if copies cannot be made in the place where the records are kept, the custodian shall allow arrangements for copying. Members of the public cannot remove a record without written permission of the custodian. Further, a public agency is not required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations, unless the same were shown or played at a public meeting, but not if copyrighted by someone other than the

public agency. However, access to the record must be provided unless there is an exception noted in the statute.

Computerized information can meet the definition of a public record and must be provided in the form requested if the public agency has the capability of producing it in that form. The agency is not required to acquire or design a special program to produce information in a desired form, but has discretion to allow an individual who requestd such information to design or provide a computer program to obtain the information in the desired form.

### Fees

Agencies may prescribe reasonable fees. The fees for copies shall not exceed the actual cost, which may include the cost of staff time. The statute also provides for persons requesting records to appeal the reasonableness of the fees charged for providing access to or furnishing copies. Fees for staff time, for such purpose of retrieval of information are allowed under KORA since the statute provides for fees for "staff time required to make the information available."

Fees for accessing records maintained on computers may be allowed, which may include the cost of computer services, including staff time. When public records are repackaged in a computerized form, additional fees may be charged, so long as the basic records are available elsewhere at cost.

### Procedures

Each public agency is to appoint a Freedom of Information Officer to assist the public with KORA requests and disputes. That officer is to provide information on KORA including a brochure stating the public's basic rights under KORA.

Each public agency is to adopt procedures to be followed and use the same procedure for all requests.

Each agency must provide, upon request, office hours, name of custodian of record, fees, and procedures for obtaining records.

Members of the public can inspect during regular office hours and any established additional hours.

If the agency does not have regular office hours, it shall establish reasonable hours when persons may inspect records. An agency without regular office hours may require 24 hour notice of desire to inspect. Notice shall not be required to be in writing.

The public agency may require proof of identity.

The public agency may require the request to be written, but not on a specific form.

The public agency may require written certification that the requestor will not use names and addresses obtained from records to solicit sales to those persons whose names are contained in the list. Other than to ask for the name/identity of the requestor, and this certification, the public agency should not require other information before complying with the KORA request.

The official custodian is allowed to designate other persons to carry out custodial duties.

The public agency must respond to the request as soon as possible, but not later than the end of the third business day following the date the request was received.

-  If access is not granted immediately, the public agency must give a detailed explanation for the delay.
-  If the request is denied, a written statement of the legal ground for the denial shall be given upon request. Some degree of specificity is required. “The burden of establishing the applicability of an exemption from disclosure under the Kansas Open Records Act requires the party claiming the exemption to provide more than conclusory language, generalized allegations, or mere arguments of counsel. A sufficiently detailed record must be provided to show the reasons why an exemption applies to the materials requested.”

Access may be denied if the request places an unreasonable burden in producing the record or is intended to disrupt the agency. CAUTION – this provision should be used only in extreme circumstances.

The public agency may require payment of the allowed fees in advance.

### Prohibitions

A list of names and addresses shall not be obtained from public records for the purpose of selling or offering for sale any property or service to the persons listed.

This provision does not prohibit commercial use generally, it just applies to use of the names to sell or offer to sell property or a service. An attorney general’s opinion states that a group of local ministers may use lists from public records to provide information about area churches.

This provision does not prohibit use of lists of names obtained from public records to solicit the purchase of property from the persons listed. A.G. Opins. No. 96-68 (water meters); 98-55 (promissory note underlying contract for deed). This provision pertains to the names and addresses of businesses listed in the public records, as well as individuals. A.G. Opin. No. 87-73.

Any person (including the records custodian) who violates this law and gives, or receives records for such purpose can be penalized with the same civil fines and penalties.



The agency may require a person who requests such records to provide written certification that she or he will not use the record for that prohibited commercial purpose.



If the requestor makes this certification, the custodian is relieved of liability if custodian provides records in good faith reliance on certification.

Cannot circumvent this provision indirectly; a third party who obtains this information from a “requestor” violates the law if it is used for commercial purposes.



A newsletter service which provides lists of names and addresses obtained from public records for its subscribers to solicit is the type of activity prohibited under the KORA.



Use of information obtained from public records to publish land ownership maps (A.G. Opin. No. 87-39) and “ownership product” documents (A.G. Opin. No. 89-47) does not violate the law.

### Closed Records

There are many records that are mandatorily closed by federal law, state statute, or Supreme Court Rule. Most of those affecting the City relate to public safety, juvenile information, identifiable drug abuse treatment records, criminal history records in possession of the law enforcement agency (with some exceptions).

### Records that may be Closed

The statute lists types of public records that are not required to be disclosed. The public agency has discretion and may decide whether or not to make the records available. The burden of showing that a record fits within an exception rests with the party intending to prevent disclosure. Some examples of records which affect the City include, but are not limited to:



Personnel records, except for “names, positions, salaries and length of service” of public officials and employees.



Criminal investigation records, with exceptions.



Identity of undercover agents or informant reporting specific violations of the law.



Notes, preliminary drafts, research data in process, memoranda or other records in which opinions are expressed or policies or actions are proposed unless such records are cited or identified in open meeting.



Library patron and circulation records of identifiable individuals.



Public records of a personal nature which would constitute a clearly unwarranted invasion of personal privacy.



Prospective location of a business or industry where no previous disclosure has been made.



Attorney work product.



Engineering and architectural estimates for public improvements.



Emergency or security information on procedures of a public agency concerning certain security measures for facilities providing water services, and other items, if such disclosure would jeopardize security.

There may be instances where an entire record would not be closed, but certain sections, which could be subject to closure, could be deleted from view (redacted).

### Sunset of Closure Exemptions

The 2009 Legislature through Senate Bill 34 extended the exceptions to a proposed 2005 sunset provision for five years. The 2000 Legislature enacted a sunset provision by which it must review and reenact closure exemptions within five years or they expire. With actions of the 2009 Legislature, the exemptions must be reviewed by 2014.

### Enforcement

Investigative subpoenas may be issued by the Attorney General and District/County Attorneys.

### Litigation

Any person, the Attorney General, or a County/District attorney, may file suit in district court. Suit must be brought in the county where the records are located. If the records are located out of state, there is no cause of action under KORA.

District court may order injunction or mandamus.

The court “shall” award attorney fees against the defendant if it finds denial of access was not in good faith or against plaintiff if the action was not in good faith, K.S.A. 45-222. Section (f) of K.S.A. provides for costs and reasonable attorney fees to be paid, even upon appeal, as part of costs.

Fines of up to \$500.00 for “each violation” against a public agency if the agency “knowingly violates any of the provisions of this act or that [it] intentionally fails to furnish information as required by this act. . . .” Such cases seeking a fine may only be brought by the Attorney General, District or County Attorney, K.S.A. 45-223.

Such actions to be given precedence by the court.

**MUNICIPAL CODE**  
**2.66**

**OPEN PUBLIC RECORDS**

## CHAPTER 2.66

### OPEN PUBLIC RECORDS

#### Sections:

- 2.66.010 Policy.
- 2.66.020 Local Freedom of Information Officer and Records Custodian.
- 2.66.030 General Procedures.
- 2.66.040 Procedures for Inspection.
- 2.66.050 Procedures for Copying.
- 2.66.060 Fee Schedule for Copying Open Public Records.
- 2.66.070 Denial of Requests.

**2.66.010 Policy.** K.S.A. 45-215, et. seq., the Kansas Open Records Act, declares that, ‘public records shall be open for public inspection by any person unless otherwise provided by this act, and that this act shall be liberally construed and applied to promote such policy’. Consistent with the policy, duties and procedures established by the State of Kansas in the act, and to facilitate the public policy of open government, the Local Freedom of Information Officer and all city record custodians shall provide full access and assistance in a timely and efficient manner to persons who request access to open public records. Copies of documents generated at recent public activities, such as Governing Body or commission or other board meetings and other current business activities, have been furnished on a free-of-charge basis in the past and that policy will continue. This ordinance and the act do not create any duties to retain particular public records, nor do they affect authority to destroy public records, the discretion of a public official to ‘open’ a record when not required or any other statutory created duty to make available for public inspection a particular record. ( Ord. 00-79 § 1, 2000; Ord. 87-30 § 17, 1987; Ord. 84-07 § 1, 1984.)

#### **2.66.20 Local Freedom of Information Officer and Records Custodian.**

(1) Local Freedom of Information Officer.

a) The Governing Body of the City of Olathe appoints the City Clerk as the local freedom of information officer.

b) The local freedom of information officer or his or her designee shall:

1. Prepare and provide educational materials and information concerning the Open Records Act;

2. Be available to assist the City and members of the general public to resolve disputes relating to the Open Records Act;

3. Respond to inquiries relating to the Open Records Act; and

4. Establish the requirements for content, size, shape and other physical characteristics of a brochure required to be displayed or distributed or otherwise make available to the public under the Open Records Act. In establishing such requirements for the content of the brochure, the local freedom of information officer shall include plainly written basic information about the rights of a requestor, the responsibilities of a public agency, and the procedure for inspecting and obtaining a copy of public records under the Open Records Act.

(2) Custodians.

a) All City officers and employees appointed or designated under this ordinance as records custodians shall protect public records from damage and disorganization; prevent excessive disruption of the essential functions of the City; provide assistance and information upon request; insure efficient and timely action and response to all applications for inspection of public records; and shall carry out the procedures adopted by this City for inspecting and copying open public records.

b) All City officers and employees appointed or designated under this ordinance shall prominently display or distribute or otherwise make available to the public a brochure in the form prescribed by the local freedom of information officer that contains basic information about the rights of a requestor, the responsibilities of a public agency, and the procedures for inspecting or obtaining a copy of public records under the Open Records Act. The official custodian shall display or distribute or otherwise make available to the public the brochure at one or more places in the administrative

offices of the governmental body where it is available to members of the public who request public information in person under this ordinance.

c) The following City officers are hereby appointed as official custodian and record custodians for purposes of the Kansas Open Records Act and are hereby charged with responsibility for compliance with that Act with respect to the hereinafter listed records and duties:

(1) Official Custodian. The City Clerk is appointed as official custodian of City records and as such shall receive and coordinate all requests for access to public records except for law enforcement records which will be received and coordinated by the Records Coordinator for the Police Department and the Fire Marshal for the Fire Department as provided in subparagraph (2) following.

(2) Custodial Procedure. The official custodian and law enforcement record custodian will be guided by the general provisions of Section 2.66.030 and the specific provisions contained in subparagraphs (a) and (b) following.

(a) Official Custodian. If a requested record, other than a law enforcement record, is on file in the City Clerk's record vault, the City Clerk will act on the request. If the record is on file in another department, the City Clerk will coordinate with the record custodian for that department and obtain a date and time that the record will be available for inspection. The City Clerk will stamp the request form "Received" and ensure its delivery to the pertinent record custodian for action as appropriate. It will not be the City Clerk's duty to determine the accessibility of records not held by his office. The City Clerk will maintain a file of all requests received by the City other than law enforcement record requests.

(b) Law Enforcement Records Custodian. Requests for law enforcement records will be received by the Records Coordinator for the Police Department and the Fire Marshal for the Fire Department and acted upon in accordance with the procedures established herein. The Records Coordinator for the Police Department and the Fire Marshal for the Fire Department will maintain a file of all law enforcement record requests separate of the file kept by the official custodian.

(3) Record Custodians. The following City officials are appointed record custodians for all public records not on file in the City Clerk's office and as are kept and maintained in their respective offices:

- a) Director of Development Services
- b) Director of Financial Services
- c) Records Coordinator of the Police Department
- d) Fire Department Chief
- e) Director of Public Works
- f) Director of Municipal Services
- g) Director of Community Services
- h) Director of Human Resources
- i) City Attorney
- j) Chief Clerk of the Municipal Court
- k) Manager of Information Technology Services
- l) Fire Marshal
- m) City Manager.

(4) Additional Record Custodians. Each of the custodians appointed in subsections (1), (2) and (3) above is hereby authorized to designate any subordinate officers or employees to serve as record custodian. Such record custodians shall have such duties and powers as are set out in the Kansas Open Records Act and this ordinance. Whenever record custodians shall appoint another person as an additional record custodian, he or she shall notify the City Clerk of such designation in writing, and the City Clerk shall maintain a register of all such designations. (Ord. 00-79 § 2, 2000; Ord. 84-104 § 1 & 3, 1984; Ord. 84-07 § 1, 1984.)

**2.66.030 General Procedures.** The following procedures are hereby adopted and shall be applied by the official custodian and each record custodian and additional record custodian:

(1) Consistent with the policy, duties and procedures established by the State of Kansas in K.S.A. 45-205 et seq., as amended, the City's official and record custodians shall provide full access and assistance in a timely and efficient manner to persons who request access to open public records.

(2) Record custodians shall adopt and apply procedures which will ensure the protection and preservation of public records with respect to the manner in which such records are inspected and copied.

(3) All persons requesting inspection of or a copy of open public records must make such request in writing, except as otherwise provided in this ordinance, and include their name, address and a reasonable description of the record document(s) they desire to inspect and copy. Although no particular form is required, the official custodian shall provide a City form for the requestor's convenience.

(4) Record custodians shall take necessary measures, not inconsistent with their duties, to provide full public access to open public records, to ensure that the essential functions of the custodian's office, department or agency are not disrupted by requests for record inspection and copying.

(5) All inspections and copying of Open Public Records shall be performed by, or under the supervision of, the record custodian responsible for such records.

(6) All record inspection and copying requests are to be submitted by the person requesting the record. The official or record custodian may demand reasonable identification of any person requesting a record.

(7) Fees for copying are due at the time application is made and are to be paid to the official custodian. A fee schedule shall be adopted by the Governing Body of the City by resolution.-

(8) The official custodian shall determine and assess a charge covering mailing and handling costs accrued in responding to requests through the mail service.

(9) The official custodian may exercise his or her discretion to reduce or waive any copying fee when such is in the public interest.

(10) No record copying charge shall be assessed against officers or employees of the City who make requests which are reasonably necessary to the performance of their official duties.

(11) Hours for making requests for inspection and/or copying shall be all regular working hours for each day the office maintains regular working office hours. If an office keeping or maintaining public records does not have working office hours Monday through Friday, the record custodian for such office shall establish hours for each such day when no regular office hours are kept; at which time members of the public may make requests for record inspection and/or copies of records.

(12) Each request for access to open public records shall be acted upon as soon as possible, but no later than the end of the third business day following the date that the request was received. If access is not granted within three working days the requestor will be given a day, time and place that the record will be made available.

(13) Information extracted from public records and routinely passed to citizens verbally during the normal course of business will continue to be disseminated in this manner. For example, information from the computerized real estate file will continue to be given out by telephone. Additionally, all records which arise from current City business activities, such as Governing Body or other commission and board meetings, will be provided as in the past, for inspection and copying at no charge to the requesting individual.

(14) The record custodian will allow access to an open public record only in the area of the City Hall or other City building in which the record is kept. Under no circumstances will a public record be removed for public inspection or copying from such premises.

(15) The above procedure, as well as any other inspection and copying procedures, shall be posted in a conspicuous place in the office of the official custodian. (Ord. 02-118 § 1, 2002; Ord. 00-79 § 3, 2000; Ord. 87-30 § 18, 1987; Ord. 84-07 § 1, 1984.)

**2.66.040 Procedures for Inspection.** The following procedures are hereby adopted and shall be applied by the official custodian and each record custodian (including additional record custodians):

(1) Record custodians shall handle all inspection requests in accordance with their duties to protect and preserve public records and to assist persons requesting inspection of open public records.

(2) No particular request form is required for submission of a request (see Section 2.66.030 (3) above), however, request submitted must be in writing; contain the name and address of the requester, and a reasonable description of the document (s) to be inspected; be in the name of an individual person(s); and delivered to the official custodian (city clerk).

(3) A written request is sufficient if it reasonably describes the record sought. In instances where the requester cannot provide sufficient information to identify a record, the official custodian shall assist in making such identification.

(4) In cases where a request for a specific record gives the official or record custodians reason to believe that the record contains information of a personal nature which if disclosed would constitute an unwarranted invasion of personal privacy, the official or record custodians shall inform the requester that a 72-hour waiting period must run before such record may be inspected. During that 72-hour period, the custodian shall make every reasonable effort to determine the identity of those persons whose privacy interest may be so affected by disclosure. The record custodian shall attempt to contact such persons and ascertain whether they, or any of them, will seek a court order challenging disclosure. Additionally, he will notify the municipal counsel of the possibility of a privacy violation and obtain a legal opinion pertaining thereto. If, after these steps and the custodian's own objective assessment, it appears that a privacy violation could occur, the custodian shall deny inspection pending the outcome of litigation or an intervening court order. (Ord. 84-07 § 1, 1984.)

**2.66.050 Procedures for Copying.** The following procedures are hereby adopted and shall be applied by the official custodian and each record custodian (including additional record custodians):

(1) Record custodians shall handle all copy requests in accordance with their duties to protect and preserve public records and to assist persons requesting copies of open public records.

(2) All request forms must be completed by the party requesting the copies. In all cases the party so requesting must be an individual person or persons. Written requests may be made on the form provided by the official custodian.

(3) Mechanical reproduction of a record shall not be undertaken when it is the judgment of the record custodian that any available means of mechanically reproducing the subject record is likely to cause damage to such record.

(4) Copy fees shall be such fees as are adopted by the Governing Body of the City by resolution.

(5) Copying procedures and payment of fees shall be published separately by City administrative regulation. No copy fee shall be assessed when multiple copies of the record requested have been prepared for free public distribution, or when the official custodian determines that the cost of charging and handling the fee exceeds the cost of providing a copy without charge. Further, copies of current city business activities, such as Governing Body and or other commissioner and board meetings, will continue to be furnished free of charge as in the past (see Section 2.66.010).

(6) No copying fee will be assessed when a denial of a request is made. (Ord. 02-118 § 2, 2002; Ord. 87-30 § 19, 1987; Ord. 84-07 § 1, 1984.)

**2.66.060 Fee Schedule for Copying Open Public Records.** In order to avoid the necessity of using general public funds of the city to subsidize special services and benefits to a record requester, a schedule of fees for copying of open public records will be published by a separate resolution adopted by the Governing Body of the City. Such fees are intended to cover costs of labor, materials and equipment to the city in reproducing public records. (Ord. 02-118 § 3, 2002; Ord. 84-07 § 1, 1984.)

**2.66.070 Denial of Requests.**

(1) Inspection. A custodian may deny a request for inspection on grounds that the requested record is not a record required by law to be disclosed or that such a request would create an unreasonable burden upon the city or that it was made with the intent to disrupt city activity. In the first instance, a record not required

by law to be disclosed, the record is either not a record covered by the act or it is one that is specifically exempted from mandatory disclosure by the act. In no instance will a custodian issue a denial of access to public record without first obtaining a legal opinion from the municipal counsel. Denials when issued, will be done in writing on a city form which provides the requester with information as to why the record access was denied and notifies the requester that it is his right to challenge the denial in the Johnson County District Court.

(2) Copy. Requests for copying records that have been made available for inspection can only be denied if the mechanical reproduction would damage the record, such copying is restricted under federal or state law or the act specifically exempts such copying. In no instance will a custodian deny a copy request without first obtaining a legal opinion from the municipal counsel. Denials, when issued, will be done in writing on a city form which provides the requester with information as to why the copy was denied and notifies the requester that it is his right to challenge the denial in the Johnson County District Court. (Ord. 84-07 § 1, 1984.)

# OPTIONAL REQUEST FORMS

# REQUEST FOR RECORD COPY



Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

**RECORDS REQUESTED:** Please provide a detailed description of the record(s) requested. Make sure your request is as specific as possible, so that your request may be filled quickly and completely.

Record Title/Date/Department

Number of Copies

_____	_____
_____	_____
_____	_____
_____	_____

\_\_\_\_\_  
Signature

Number of Copies: \_\_\_\_\_  
Copy Charges: \$ \_\_\_\_\_  
Staff Time: \$ \_\_\_\_\_

**CHARGES:** A charge for providing copies of public records has been set by the Governing Body. The fee schedule established by the city is posted on the web and can be accessed by connecting to [www.olatheks.org](http://www.olatheks.org)

**ADVISORY:** A list of names and addresses shall not be obtained from public records for the purpose of selling or offering for sale any property or service to the persons listed. This provision pertains to the names and addresses of businesses listed in the public records as well as the individuals. K.S.A. 45-220(c) (2), K.S.A. 45-230

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TO BE COMPLETED BY OFFICIAL CUSTODIAN

Request Received:

Date:  
Time:

Request Filled:

Date:  
Time:

\_\_\_\_\_  
Official Custodian

Mail to the attention of the City Clerk  
Post Office Box 768  
Olathe, Kansas 66051-0768  
Or fax to 913-971-8525

**CERTIFICATION**

I, \_\_\_\_\_, having made a written request for access to and/or copies of certain public records identified on the attached request pursuant to the Kansas Open Records Act, do hereby certify:

1. That I do not intend to and will not use any list of names or addresses contained in or derived from the records or information obtained from the City of Olathe, for the purpose of selling or offering for sale any property or service to any person on the list or to any person who resides at any address on the list.
  
2. That I do not intend to and will not give, or otherwise make available to any person any list of names or addresses contained in or derived from the records or information obtained from the City of Olathe, for the purpose of allowing that person to sell or offer for sale any property or service to any person on the list or to any person who resides at any address on the list.
  
3. That I have been informed and am aware that to knowingly sell, give, or receive any list of names or addresses contained in or derived from public records, for the purpose of selling or offering for sale any property or service to persons on the list is a violation of state statute (K.S.A.45-230) and that any person violating the prohibition shall be liable for payment of a civil penalty.

\_\_\_\_\_  
**Signature of Requestor**

\_\_\_\_\_  
**Address**



**CERTIFICATION**

I, \_\_\_\_\_, having made a written request for access to and/or copies of certain public records identified on the attached request pursuant to the Kansas Open Records Act, do hereby certify:

1. That I do not intend to and will not use any list of names or addresses contained in or derived from the records or information obtained from the City of Olathe, for the purpose of selling or offering for sale any property or service to any person on the list or to any person who resides at any address on the list.
  
2. That I do not intend to and will not give, or otherwise make available to any person any list of names or addresses contained in or derived from the records or information obtained from the City of Olathe, for the purpose of allowing that person to sell or offer for sale any property or service to any person on the list or to any person who resides at any address on the list.
  
3. That I have been informed and am aware that to knowingly sell ,give, or receive any list of names or addresses contained in or derived from public records, for the purpose of selling or offering for sale any property or service to persons on the list is a violation of state statute (K.S.A.45-230) and that any person violating the prohibition shall be liable for payment of a civil penalty.

\_\_\_\_\_  
**Signature of Requestor**

\_\_\_\_\_  
**Address**