

**KOMA/KORA COMPLAINTS RECEIVED BY THE ATTORNEY
GENERAL'S OFFICE
REPORT PURSUANT TO K.S.A. 2007 SUPP. 75-753**

July 2007 through June 2008

KORA COMPLAINTS

STATE AGENCIES

Kansas Department of Insurance

Contact: A former employee of the Department of Insurance requested records from his personnel file on February 20, 2008. The complainant contacted this office on March 18, 2008.

Allegation: The record request had not been acknowledged or acted upon in a timely fashion.

Action Taken: This office contacted the Department of Insurance about the requested records. The Department stated that they had never received the record request as it was sent via email to a general delivery email box. Once the request was received, the Department determined the requested records were closed as part of a personnel file per K.S.A. 2007 Supp. 45-221(a)(4) and (10).

Office of the Governor

Contact: A citizen contacted this office by email on March 26, 2008 after receiving the cost estimate from the Governor's Office for the records requested.

Allegation: The request was not produced in a timely fashion as required by KORA and the costs quoted were excessive.

Action Taken: This office contacted the Governor's Office for clarification of the actions taken. After reviewing the correspondence between the requestor and the Governor's Office it was determined that the request was acknowledged within the statutory time frame and because of the volume of documents requested, the cost for reproduction and review were based upon staff costs. A letter describing the method for the cost calculations was provided to the requestor. There was no further contact.

Kansas Health Policy Authority

Contact: A citizen contacted this office in June, 2008 concerning the response received from the Kansas Health Policy Authority for records.

Complaint: The requestor made a request for a fee schedule for dental procedures. The Kansas Health Policy Authority did not provide the requested schedule.

Action Taken: This office contacted the Kansas Health Policy Authority for information about the request. Upon reviewing the correspondence and discussions with staff members, it was determined that the Kansas Health Policy Authority did not have such a document. KORA does not require either the creation or acquisition of a requested document. A letter was sent to the requestor with an explanation of KORA. There has been no further contact.

Kansas Department of Revenue

Contact: Kansas Resident. Faxed a letter to this office on October 9, 2007.

Allegation: Citizen had requested information about whether her son was licensed to operate a motorcycle. The local DMV had refused to disclose the information.

Action Taken: This office contacted the records custodian for the DOR and was informed that the information was closed by federal law. (Driver Privacy Protection Act of 1994.) We responded by letter and provided the form necessary to make such a request and directed her to make her application using one of the allowed exceptions.

COUNTIES

Morton County Attorney's Office

Contact: *Garden City Telegram*. Faxed letter received July, 2007.

Allegation: Failure to provide the requested copy of an autopsy report.

Action Taken: Referred the matter to the County Attorney for resolution. He responded by letter stating he was not the custodian for autopsy records and the request should be directed to the Morton County Coroner. No further action was taken.

Harvey County Sheriff's Office

Contact: Inmate. Letter received October, 2007.

Allegation: Sheriff had refused to provide certain records.

Action Taken: Referred the matter to the County Attorney. No further contact was made by any party.

CITIES

City of Kismet (Seward County)

Contact: A citizen contacted this office in February, 2008 about the fees requested by the City of Kismet to produce records.

Allegation: The fee amount for the production of records exceeded the actual cost of producing the records and were used to discourage record requests.

Action Taken: Referred the matter to the County Attorney. No further contact was made by any party.

City of Garfield (Pawnee County)

Contact: The County Attorney referred a citizen complaint to this office in January, 2008, concerning the City of Garfield. The matter was referred because of a conflict of interest.

Allegation: The City of Garfield failed to provide acknowledgment and documents within the statutory period.

Action Taken: Upon consultation with the city attorney, it was determined a violation had occurred. However, because the Mayor and City Council were scheduled for KOMA and KORA training because of a settlement agreement for an open meetings violation, a warning was issued. Since the training, no further complaints or contact has been made.

City of Tonganoxie (Leavenworth County)

Contact: A citizen contacted this office in June 2008 about the City of Tonganoxie and a record request.

Allegation: The citizen had requested certain documents from the City. Although some documents were provided, the citizen believed that additional documents responsive to the request were being withheld.

Action Taken: Pursuant to the office policy, the matter was referred to the Leavenworth County Attorney's office. No further contact was made.

City of Canton (McPherson County)

Contact: Citizen. Letter received July, 2007.

Allegation: Failure to reply in a timely manner and failure to provide all requested records.

Action Taken: Referred the complaints to McPherson County Attorney per office policy. County Attorney investigated and determined once clarification of the records was made, the request was completed. There was no violation.

City of Hiawatha Police Department (Brown County)

Contact: Citizen. Letter received September, 2007.

Allegation: The police department would not provide investigation records of a death.

Action Taken: This office responded to the request as no investigation was necessary. K.S.A. 45-221(a)(10) allows closure of some types of records as a part of a police investigation. Informed the individual that they may request a detailed reason for the denial and seek court review. No further contact was made.

OTHER PUBLIC ENTITIES

Minneha Township

Contact: Citizen. Letter received October, 2007.

Allegation: Excessive fees for providing public documents.

Action Taken: Responded to the citizen about the complaint procedure and copied the Sedgwick County District Attorney. No further action was taken.

Kaw Valley Drainage District

Contact: Kansas Aggregate Producers Association. Letter received August, 2007.

Allegation: Records were not being produced.

Action Taken: Referred the issue to the Shawnee County District Attorney. The matter was resolved and records produced.

Jewell County Hospital

Contact: Citizen. Letter received November, 2007.

Allegation: Failure to provide employee compensation information as requested.

Action Taken: Because the County Attorney is also the Hospital Board attorney, this office conducted the investigation and determined that a violation had occurred. Because the County/Hospital Attorney had already intervened and made sure the documents were provided, no further action was taken.

USD 415 (Brown County)

Contact: A citizen first called and then forwarded copies of correspondence in June, 2008.

Allegation: USD refused to provide a copy of an appraisal of artwork.

Action Taken: Because the County Attorney had a conflict of interest, this office contacted the school district and their attorney. After discussing the request and possible reasons for the denial, the district agreed to provide the appraisal. No further action was taken.

KOMA COMPLAINTS

STATE AGENCIES

Kansas Electrical Transmission Authority

- Contact: A reporter. An email received on January 30, 2008.
- Allegation: A majority of the Kansas Electrical Transmission Authority (KETA) had met without providing notice as required by KOMA in K.S.A. 75-4318(b) and possible serial communications regarding the business of KETA.
- Action Taken: This office investigated and determined that there had not been a violation. Because four legislators served upon the KETA board and coincidentally those same legislators sponsored energy related legislation, the legislation did not concern the business of KETA and as such no meeting occurred that would have required notice. Therefore, no further action was taken.

Kansas Board of Nursing

- Contact: A board member contacted this office in January 2008.
- Allegation: At the December meeting of the Board of Nursing an inappropriate subject was discussed during executive session. The executive session had been called for the attorney/client discussion, but the subject was personnel.
- Action Taken: After investigation, it was determined a “technical violation” had occurred because the subject could have been discussed using the appropriate executive session designation, personnel. No further action was taken.

COUNTIES

Gove County Commissioners

- Contact: The County Attorney referred a possible KOMA violation to this office by letter on March 26, 2008.
- Allegation: Based upon newspaper accounts, the county commissioners may have engaged in serial communications regarding a burn ban for the county without providing notice of such a meeting and providing the public to attend such a discussion.

Action Taken: This office investigated and determined that the elements of a meeting had occurred, a gathering by interactive means, by a majority of quorum (two in this instance), and the discussion of county business (the proposed burn ban). However, because no one had requested notification of commission meetings, there was no violation.

Thomas County

Contact: The editor of the *Colby Free Press*. Emails received by this office on December 28, 2007.

Allegation: Inappropriate use of an executive session by discussing a general pay plan and failing to return to open session as provided in the motion to enter executive session.

Action Taken: Because of a conflict, this office investigated and determined a violation had occurred. A settlement agreement was reached for training.

CITIES

City of Garfield (Pawnee County)

Contact: Complaint referred by the County Attorney because of a conflict of interest. Letter received August, 2007.

Allegation: Failing to make a proper motion to enter into executive session per K.S.A. 75-4319 and discussing a topic not allowed in executive session.

Action Taken: Requested the assistance of the Pawnee County Sheriff to investigate. We determined a violation had occurred and entered into a settlement agreement for KORA/KOMA training and avoiding future violations.

City of Richmond (Franklin County)

Contact: Citizens. Letters and emails received in May, 2008.

Allegation: The City Council may have engaged in serial communications, made a binding decision in executive session and inappropriately discussed an entire department.

Action Taken: Because of a conflict by the Franklin County Attorney, this office conducted the investigation of the complaints. After investigation, it was determined a violation of KOMA occurred when the Mayor and City Council inappropriately discussed the discontinuation of the police department in executive session under the personnel exception

to open meetings. A settlement agreement was reached for training to avoid any future violations. (See Counties Report.)

City of Gardner (Johnson County)

Contact: A citizen contacted this office by letter on May 23, 2008.

Allegation: City Council had "serial communications" to avoid the public notice and conduct of a meeting.

Action Taken: This office referred the matter to the Johnson County District Attorney's Office per office policy. (See Counties Report.)

City of Harper (Harper County)

Contact: Citizen. By email to this office on June 5, 2008.

Allegation: The Harper City Council entered into executive session for the purpose of property acquisition without the proper motion.

Action Taken: Per office policy the matter was referred to the Harper County Attorney. (See Counties Report.)

City of Greensburg (Kiowa County)

Contact: Citizen, by telephone on February 18, 2008.

Allegation: The City of Greensburg entered into executive session without the proper motion and had met outside of the community for the purpose of avoiding public attendance.

Action Taken: Per office policy the matter was referred to the Kiowa County Attorney. (See Counties Report.)

City Lawrence (Douglas County)

Contact: The District Attorney referred a complaint to this office because of a conflict of interest. Letter received November, 2007.

Allegation: City Council recessed into executive session for the purpose of attorney/client discussions and included a third party, thus, breaking the privilege.

Action Taken: This office investigated and determined that the inclusion of the third party did negate the consultation with the city attorney as privileged. We entered into a consent agreement with the city council whereby they admit to the violation, agreed to not violate in the future, and agreed to training on KOMA.

OTHER ENTITIES

USD 475 (Geary County)

Contact: Geary County attorney copied this office with a letter to the school board of USD 475. Letter received July, 2007.

Allegation: Potential violation of KOMA by the use of email, in effect a serial meeting, by the President of the school board.

Action Taken: A warning letter was issued.

USD 464 (Leavenworth County)

Contact: Editor, *The Mirror*. Letter received December, 2007.

Allegation: Requested this office review the findings of the county attorney that no KOMA violation had occurred. The initial complaint concerned the use of an executive session used to discuss matters with the board's attorney. Complainant believed that the topic should have been openly discussed.

Action Taken: This office reviewed the materials and found no reason to review the decision.

USD 259 (Sedgwick County)

Contact: Attorney for the *Wichita Eagle*. Letter received December, 2007.

Allegation: An advisory group had been created for the Superintendent and was not conducting the meetings subject to KOMA.

Action Taken: Referred complaint to Sedgwick District Attorney for investigation.

Seward County Council on Aging, Inc. (Seward County)

Contact: Citizen. Complaint letter received October, 2007.

Allegation: Inquiry to determine if the Council was subject to KOMA, and if so, did they violate it ?

Action Taken: Referred the inquiry to Seward County attorney.

Merriam Drainage District (Johnson County)

Contact: Merriam City Attorney. Letter received July, 2007.

Allegation: Failure to provide meeting notice when requested.

Action Taken: A concurrent complaint was made to the District Attorney and per office policy, the complainant was notified that this office will take up the complaint if the District Attorney declines.

Jewell County Hospital Board (Jewell County)

Contact: Citizen. Letter received November, 2007.

Allegation: Inappropriate discussion of a change of bylaws in an executive session. Discussion outside of an open meeting to consider the appointment of a temporary administrator.

Action Taken: After investigation, this office determined a "technical violation" of KOMA occurred because the subject of the bylaws could be discussed in executive session under the attorney-client consultation, but not under the subject that was included in the motion, discussion of non-elected personnel. No further action was taken. There was no evidence of any discussion outside an open meeting to discuss the appointment of a temporary administrator.

Washburn University (Shawnee County)

Contact: Citizen. Letter received May 2008.

Allegation: Washburn University failed to provide notice of a meeting even though a valid request was made.

Action Taken: Per office policy, the matter was referred to the Shawnee County District Attorney's Office. (See Counties Report.)