

**KOMA/KORA COMPLAINTS RECEIVED BY THE
OFFICE OF THE ATTORNEY GENERAL
ANNUAL REPORT PURSUANT TO K.S.A. 2014 SUPP. 75-753**

July 1, 2013 through June 30, 2014

KORA COMPLAINTS

STATE AGENCIES

Kansas Department of Health and Environment

Contact: An individual requested copies of criminal history records related to a KDHE notice to the individual's employer that he was prohibited from working in a child placing agency. KDHE advised that the Department was not permitted to provide the records and directed the individual to the Kansas Bureau of Investigation. A contact was made to this office.

Allegation: KDHE improperly refused to provide copies of or access to the requested records.

Action Taken: This office contacted KDHE for an explanation. KDHE explained that the requested records were criminal history records, which under state law, the Department is not permitted to disclose to noncriminal justice persons and agencies. This office found that the KORA does not require agencies to provide records when disclosure would violate state law, and thus KDHE's refusal was not a KORA violation. The individual was provided with information regarding how to obtain copies of his criminal history record.

COUNTIES

Johnson County

Contact: An individual requested records from the Johnson County Board of Commissioners and alleged that he did not receive a response within the required three business days. A contact was made to this office.

Allegation: The Johnson County Board of County Commissioners failed to provide a timely response to the KORA request.

Action Taken: This office contacted counsel for Johnson County. The Assistant County Counselor advised she had not received the request. Upon investigation, she learned that the requester's emailed KORA request was screened out by the County's email filter due to a link included in the requester's emails. The County has now set its email filter so that future emails from the requester will not be blocked. The Counselor also noted that the request was sent after business hours, so that it would not have been received until the following business day, making the three-day deadline later than the requester had stated. Finally, the

Counselor stated that the requested information was provided to the requester's attorney. Because it did not appear that the County had knowingly violated the KORA or intentionally failed to furnish information, no further action was taken by this office.

CITIES

No KORA complaints concerning cities were investigated by the Office of the Attorney General during the reporting period.

REFERRALS TO COUNTY OR DISTRICT ATTORNEY OFFICES

- City of Augusta (Butler County) – refusal to provide access to records. See county report for more details.
- Rural Water District #9, Jefferson County (Jefferson County) – failure to provide access to records.
- Gardner Police Department (Johnson County) – refusal to provide requested record and improper handling of KORA request.
- Morris County Rural Water District #1 (Morris County) – failure or refusal to respond to KORA request.
- City of Downs (Osborne County) – refusal to provide a copy of a city ordinance. See County report for more details.
- City of Maize Police Department (Sedgwick County) – denial of discovery request to access records; city budget not available on city website; no freedom of information officer. See county report for more details.

KOMA COMPLAINTS

STATE AGENCIES

Representative Mark Hutton, Kansas Legislature

Contact: Rep. Hutton sent an email to the members of the House Standing Committee on Insurance, of which he is the Vice-Chair, with copies to the Kansas House Speaker and another representative. The email discussed the provisions of a bill pending before the Committee and advocated for its passage. After sending the email, Rep. Hutton was advised that it might be a “serial communication” or interactive communication outside of a noticed meeting and as such might violate KOMA. He contacted this office to self-report a possible KOMA violation.

Allegation: The email sent to the Committee may have violated the KOMA.

Action Taken: This office reviewed the email and the facts regarding its transmission. Rep. Hutton was advised that first, it was not clear that a serial communication had taken place, because there was no evidence that a collective majority of the membership of the Committee engaged in interactive communications or discussions outside of a Committee meeting concerning the contents of the email. Rep. Hutton was further advised that this office would not investigate whether such discussions had taken place, because regardless, the activity was protected by the “speech and debate” clause of the Kansas Constitution, Article 2, Section 22, which is an exception to the KOMA requirement that serial communications be open. The email was sent in the Representative’s capacity as Vice-Chair of the Committee to advocate a position on proposed legislation, which falls within the sphere of a legitimate legislative activity protected by the speech and debate clause. Thus, even if a KOMA violation did occur, the speech and debate clause would provide immunity in this situation.

COUNTIES

No KOMA complaints concerning cities were investigated by the Office of the Attorney General during the reporting period.

CITIES

City of Horton

Contact: An individual believed that several actions by the Mayor of Horton may have violated the KOMA or otherwise been improper, including driving around town with a city commissioner looking at properties; stating that he had reached a decision on an issue with other commissioners outside of a public meeting; dressing down employees in an open meeting instead of in an executive session; acting as City Administrator; directing city employees and awarding city projects without going through a bidding process; and threatening city employees and citizens. The individual also noted that the Brown County Attorney also serves as the City Attorney and alleged that he does not focus on City matters during meetings. A contact was made to this office.

Allegation: The Mayor of Horton violated the KOMA and otherwise acted improperly.

Action Taken: This office reviewed and considered the allegations. The complainant was advised that in the case of matters that potentially constituted KOMA violations, there was insufficient evidence to determine that there was a violation. The complainant was invited to provide additional information but did not do so. Other allegations included in the complaint were not covered by the KOMA and thus would not constitute a violation of the KOMA. The complainant was advised of appropriate avenues for raising these allegations.

REFERRALS TO COUNTY OR DISTRICT ATTORNEY OFFICES

- Enterprise City Council (Dickinson County) – concern about the use of executive sessions and whether confidential information was improperly released following an executive session.
- U.S.D. No. 489 School Board (Ellis County) – concern about making a decision outside of an open meeting. A complaint was filed with the County Attorney and this office so the County Attorney investigated the complaints.
- Milford City Council (Geary County) – two separate complaints about various issues regarding Council meetings, including reaching a consensus in executive session without taking a public vote. See Fiscal Year 2014 county report for details regarding the first complaint and Fiscal Year 2015 county report for details regarding the second complaint.
- Johnson County Board of County Commissioners (Johnson) – concerns about the use of executive sessions and whether binding action was taken during any executive session. See the FY2015 county report for details.
- Oswego City Council (Lafayette County) – concern that an “informational meeting” concerning an upcoming sales tax election may have violated the KOMA. See county report for details.
- U.S.D. No. 380 School Board (Marshall County) – holding a special meeting without giving public notice and taking action at the meeting. See county report for details.

- Plains City Council (Meade County) – concerns regarding whether Council followed proper procedure when meeting to discuss a change in street signage and failure to keep minutes. See county report for more details.
- Seneca City Council (Nemaha County) – improper use of executive session.
- Osage City Council (Osage County) – holding a secret ballot to elect a new member. See county report for details.
- U.S.D. No. 434 Board of Education (Osage County) – concerns about the use of executive sessions and whether binding action was taken during an executive session. See county report for details.
- City of Pratt Planning Board (Pratt County) – discussing and reaching a “gentleman’s agreement” regarding business of the Board outside of an open meeting. See county report for details.
- City of Bunker Hill (Russell County) – holding a special meeting without public knowledge.
- Saline County Commission (Saline County) – improperly closing meetings of the Jail Advisory Board created by Commission. See county report for details.
- Kansas Corporation Commission (Shawnee County) – improperly going into executive sessions. See county report for details.
- Altoona City Council (Wilson County) – improperly holding an executive session. See county report for details.