

BEFORE THE OFFICE OF THE KANSAS ATTORNEY GENERAL
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
Shawnee County, Kansas

In the Matter of the
City of Haysville

)
)

Case No. 2025-OG-0002

CONSENT ORDER

NOW on this 23rd day of May, 2025 this matter comes before the Attorney General for the purposes of resolving the above-captioned matter pursuant to the provisions of K.S.A. 45-251(a)(1), which grants the Attorney General authority to enter into consent orders.

In lieu of further legal proceedings concerning violations of the Kansas Open Records Act (KORA), K.S.A. 45-215 *et seq.*, the undersigned hereby knowingly and voluntarily agree as follows:

1. On or about April 16, 2024, the Attorney General's Office received a complaint alleging the City of Haysville, Kansas ("the City") violated the KORA. Following this complaint, the Kansas Attorney General's Office conducted an investigation into the allegations that the City improperly withheld records responsive to a request without notification to the complainant that records were being withheld from response in violation of K.S.A. 45-218(a) and (d), which provides that public records shall be open for public inspection and access unless otherwise provided by law.

2. The City is a public agency that is subject to the requirements of the KORA, and it must permit access to records as set forth in the KORA.

3. Investigation and/or statements provided on behalf of the City confirm the following violation of the KORA by a preponderance of the evidence:

a. On February 10, 2023, the complainant submitted a KORA request to the City seeking "[a]ll code enforcement inspection records for 7106 S. Broadway Ave. Haysville, KS 67060, including but not limited to all photos taken by or on behalf of the City of Haysville between the dates of July 1, 2021 and February 10, 2023. Copies of all email or text communications between City of Haysville employees regarding 7106 S. Broadway Ave. Haysville, KS 67060 between the dates of July 1, 2021 and February 10, 2023. Copies of all email or text communications between City of Haysville employees regarding Joshua or Josh Kirkhart between the dates of June 1, 2021 and February 10, 2023."

b. On March 9, 2023, the City provided the complainant with a thumb drive containing records but did not include a responsive letter outlining any denial to produce certain photos or provide reasoning for redactions to the material provided.

c. On January 29, 2024, photos responsive to the complainant's requests but not provided in response to the complainant's February 10, 2023 KORA request, were presented at a jury trial conducted in Sedgwick County District Court.

d. During the investigation, the City acknowledged that certain photos were not provided in response to the complainant's request as an unintentional oversight. The City provided the Attorney General's Office copies of these photos.

e. The photos withheld from the City's response to the complainant's KORA request are not subject to discretionary closure under K.S.A. 45-221 or any other provision of law.

4. Based upon the above information, the City admits and agrees that it violated the KORA as set out in paragraph 3 above when it failed to provide the photos subsequently used at trial in response to the complainant's KORA request.

5. The City agrees it fully understands and agrees that it will comply with the requirements of the KORA as set out in K.S.A. 45-215 *et seq.* in responding to each KORA request it receives.

6. The Attorney General and the City mutually desire to enter into this Consent Order in lieu of further adjudicative proceedings.

7. The City understands and waives all rights to further adjudication of facts and law that could be determined pursuant to other enforcement proceedings conducted in accordance with K.S.A. 45-222(a), 45-251(a)(2), or 45-253, concerning this matter.

8. The City waives any claim or assertion that the Kansas Judicial Review Act (KJRA), K.S.A. 77-601 *et seq.*, applies to agency actions that are governed by the provisions of K.S.A. 45-215 *et seq.*, and amendments thereto, relating to open records (the KORA), and subject to an action for civil penalties or enforcement, and thus it does not have a right to appeal under the KJRA.

9. The Attorney General accepts the waivers and stipulations by the City.

WHEREAS, the Attorney General finds that the above facts have been established by a preponderance of the evidence, and that it is proper that the City be subject to this Order based on the provisions of K.S.A. 45-251(a)(1), which permits the Attorney General to impose conditions or requirements on a public agency for violation of the KORA in a Consent Order;

AND WHEREAS the Attorney General and the City mutually desire to enter into a Consent Order in lieu of further adjudicative proceedings to resolve the violation.

NOW THEREFORE, the City consents to the following terms and conditions, and the Attorney General orders that:

10. The City shall:

a. Ensure that City staff, including the City's freedom of information officer, the City's record custodian(s), and any other staff responsible for assuring compliance with

the requirements of the KORA obtain at least one (1.0) hour of training on the provisions of the KORA to be presented by an attorney experienced in dealing with open records issues, within three (3) months of the date of this Consent Order;

b. Provide the Attorney General's Office with a written statement confirming that City staff responsible for assuring compliance with the KORA have obtained the required KORA training;

c. Pay a civil penalty of \$250.00. Such payment shall be made payable to the *Office of the Attorney General* pursuant to K.S.A. 75-760;

d. Not engage in any future violations of the KORA.

11. The City understands and agrees that if it fails to comply with the terms of this Consent Order, the Attorney General may take action to enforce its provisions as authorized by K.S.A. 45-251(c) and amendments thereto.

12. The City understands and agrees that if it engages in any future violations of the KORA, the facts and statements contained herein may be considered in determining the appropriate enforcement action and remedy.

13. The City agrees and understands that this Consent Order does not resolve future and/or currently unknown unlawful conduct that may occur or be brought to the attention of the Attorney General or any other prosecutor, and any such alleged violations of the KORA may be subject to investigation proceedings as provided by K.S.A. 45-228 and/or enforcement proceedings conducted in accordance with K.S.A. 45-222, 45-251(a)(2), or 45-253.

14. In consideration of these admissions and agreements by the City and the above-agreed remedies, the Attorney General agrees to forgo further prosecution for the violations of the KORA set forth herein.

15. The City agrees that this Consent Order conforms to Kansas and federal law and that the Attorney General has the authority to enter into this Consent Order.

16. Except as provided in paragraphs 11 and 12, this Consent Order shall operate as a complete release of all claims the City may have against the Attorney General, his agents or employees, arising out of the investigation of this matter. The City agrees not to file, or cause to be filed, any litigation or claims in any federal or state court of law or federal or state administrative agency against the Attorney General, the Office of the Attorney General, its agency or employees, individually or in their official capacity. Such litigation or claims include, but are not limited to, any K.S.A. Chapter 60 or Chapter 61 civil action regarding negligence and/or a 42 United States Code action and/or any administrative petition for redress. The City agrees that all actions in this matter were a bona fide use of discretion and authority granted to the Attorney General, the Office of the Attorney General, its agents or employees, which is a statutory exception to liability within the Kansas Tort Claims Act, K.S.A. 75-6104(b), (c) or (e).

17. The City understands that this Consent Order shall be maintained and made available for public inspection pursuant to the provisions of K.S.A. 45-251(e) and amendments thereto.

18. This Consent Order shall be a public record in the custody of the Office of the Attorney General.

19. This Consent Order constitutes the entire agreement of the parties and may only be modified by a subsequent writing signed by the parties. This Consent Order shall be interpreted in accordance with the laws of the State of Kansas.

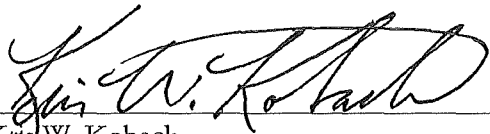
20. Should any court, agency or tribunal with authority and jurisdiction to do so, find that provision or term of this Consent Order is invalid or unenforceable, the remaining provisions and terms of the Order shall remain in full force and effect.

21. This Consent Order shall become effective on the date indicated in the Certificate of Service.

WHEREFORE, the Attorney General and the City consent to these provisions.

IT IS SO ORDERED.

OFFICE OF THE ATTORNEY GENERAL



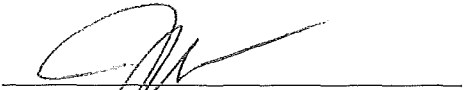
Kris W. Kobach
Kansas Attorney General

Prepared By:



Amber Smith, #23911
Deputy Attorney General
Open Government Enforcement Unit
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Topeka, KS 66612-1597
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Approved By:



Joshua Pollak, #21699
Haysville City Attorney
Minter & Pollak
800 E 1st Street N # 310
Wichita, Kansas 67202
(316) 265-0797


City of Haysville



Mayor/Russ Kessler

6/9/2025

Date



City Administrator/Will Black

6/9/25

Date

ATTEST:



[Name]


6/9/25

Date

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of May, 2025, a true and correct copy of the foregoing Consent Order was deposited in the United States mail, first class postage prepaid, addressed to:

Joshua Pollak
Minter & Pollak
800 E 1st Street N # 310
Wichita, Kansas 67202
(316) 265-0797
City Attorney for the City of Haysville

A handwritten signature in cursive script, appearing to read "Amber Smith", written over a horizontal line.

Amber Smith
Deputy Attorney General