

**REPORT OF THE JUDICIAL COUNCIL
CRIMINAL LAW ADVISORY COMMITTEE
18 H.B. 2571 and 18 S.B. 360**

December 6, 2018

On May 9, 2018, Representative Blaine Finch asked the Judicial Council to study 2018 H.B. 2571 and S.B. 360, as introduced. These bills proposed extensive changes to the disclosure of criminal investigation records, including body and vehicle camera recordings, under the Kansas Open Records Act. On June 1, 2018, the Judicial Council referred the study to the Criminal Law Advisory Committee with the addition of five ad hoc members to represent various stakeholders associated with the disclosure of criminal investigation records (the Committee).

COMMITTEE MEMBERSHIP

The members of the Judicial Council Criminal Law Advisory Committee are:

Stephen E. Robison, Chair, Member of Fleeson, Goong, Coulson, & Kitch, LLC and Member of the Kansas Judicial Council; Wichita

Natalie Chalmers, Assistant Solicitor General; Topeka

Sal Intagliata, Member, Monnat & Spurrier, Chartered; Wichita

Ed Klumpp, Chief of Police-Retired, Topeka Police Department; Tecumseh

Patrick M. Lewis, Criminal Defense Attorney; Olathe

Steven L. Opat, Geary County Counselor; Junction City

Hon. Cheryl A. Rios, District Court Judge in the Third Judicial District; Topeka

Ann Sagan, Public Defender, State Board of Indigents' Defense Services; Topeka

Ann Swegle, Sedgwick County Deputy District Attorney; Wichita

Kirk Thompson, Director of the Kansas Bureau of Investigation; Topeka

Rep. John Wheeler, Kansas House of Representatives, District 123; Garden City

Ronald Wurtz, Retired Public Defender (Federal and Kansas); Topeka

Prof. Corey Rayburn Yung, KU School of Law Professor; Lawrence

Ad Hoc Members:

Rep. John Alcalá, Kansas House of Representatives, District 57; Topeka

Doug Anstaett, Former Executive Director of the Kansas Press Association; Topeka

Kent Cornish, President of the Kansas Association of Broadcasters; Topeka

Tammie Lord, Chief Legal Counsel, Kansas Highway Patrol; Topeka

Amanda Stanley, General Counsel, League of Kansas Municipalities; Topeka

METHOD OF STUDY

The Committee met three times in person and once via conference call between August and November 2018. In preparation for the discussion of H.B. 2571 and S.B. 360, the Committee reviewed the bills and the following materials:

- Written testimony from the House and Senate Judiciary Committee hearings held February 13, 2018.
- Kansas Open Records Act – K.S.A. 2018 Supp. 45-215 *et seq.*
- Kansas expungement statutes - K.S.A. 2018 Supp. 21-6614 and 22-2410.
- *Harris Enterprises, Inc. v. Moore*, 241 Kan. 59 (1987) and *Seck v. City of Overland Park*, 29 Kan. App. 2d 256 (2000).
- Statutes regarding the release of criminal investigation records and body camera records from Arkansas, Connecticut, Florida, Illinois, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Missouri, North Carolina, Oklahoma, Pennsylvania, Texas, and Washington D.C.
- Kansas Rules of Professional Conduct 3.6 and 3.8.
- Input from the Kansas Attorney Disciplinary Administrator’s office regarding the ethical rules governing prosecutors and the release of information.
- Mary D. Fan, *Privacy, Public Disclosure, Police Body Cameras: Policy Splits*, 68 Ala. L. Rev. 395 (2016).
- Report of the Judicial Council Criminal Law Advisory Committee – Sub. for S.B. 18; December 4, 2015.

- Feedback from various law enforcement agencies in Minnesota, North Carolina, and Pennsylvania regarding their use of the state’s statutes governing the disclosure of body camera records.

DISCUSSION

18 H.B. 2571 suggested extensive changes to how public agencies disclose criminal investigation records pursuant to the Kansas Open Records Act (KORA). The bill classified criminal investigation records as either active or inactive and proposed that, upon request, public agencies be required to disclose inactive criminal investigation records. H.B. 2571 and S.B. 360 also required the disclosure of certain body and vehicle camera records.

Currently under the KORA, the disclosure of criminal investigation records is a discretionary exemption. Unless the law otherwise requires disclosure, a public agency may choose whether to disclose criminal investigation records.¹ The definition of criminal investigation records includes every audio or video recording made by law enforcement using a body camera or vehicle camera.² Anyone may make a request for the disclosure of criminal investigation records. After evaluation of the request, the public agency (often a law enforcement agency) decides whether to disclose the requested records. If the agency denies the request for disclosure, the requestor may file an action in district court to have the court review the agency’s decision. The court may uphold the agency’s denial, order the disclosure of the records, or order disclosure subject to certain conditions. The statute sets out the standard for judicial review of the agency’s decision; however, because public agencies know that is the standard the court will follow, agencies look to it for guidance when making the decision whether to disclose criminal investigation records.³

First, the Committee discussed the disclosure of criminal investigation records in general. Second, it considered the disclosure of body and vehicle camera records and whether there should be different rules governing this subcategory of criminal investigation records.

¹ K.S.A. 2018 Supp. 45-221(a)(10)

² K.S.A. 2018 Supp. 45-217(c)

³ K.S.A. 2018 Supp. 45-221(a)(10)

Criminal Investigation Records

H.B. 2571 proposed to characterize all criminal investigations as “active” or “inactive.” Except as otherwise provided, the bill would prohibit public agencies from disclosing criminal investigation records while the investigation is active and require disclosure of the records when the investigation is inactive. The Committee agreed that public agencies should not be prohibited from disclosing criminal investigation records as needed, even if the investigation is active. The Committee had concerns about the bill’s proposed definition of inactive. While a case may become “cold” (i.e. inactive) due to a lack of leads or evidence, the case remains open. The mandatory disclosure of criminal investigation records pertaining to a case that is inactive but not yet closed could jeopardize future investigation or prosecution. Requiring the disclosure of records related to an inactive investigation also fails to adequately protect people’s privacy rights and account for the unique facts and circumstances of each case. A majority of the Committee recommends the agency continue to be given the discretion to decide whether to disclose a record based on the unique facts of each case.

The Kansas legislature demonstrated that it recognized both the importance of disclosing and protecting criminal investigation records by enacting the criminal investigation exemption to KORA in K.S.A. 2018 Supp. 45-221(a)(10). The legislature gave the public agency the right to disclose or withhold criminal investigation records as it sees fit. The Kansas Supreme Court summarized the legislative intent behind enacting the criminal investigation exemption as follows:

“Criminal investigation files are sensitive. Raw investigation files nearly always include the names of many innocent people. Where the files are open to public scrutiny, the potential for injury is great. In addition, if criminal investigation files are open, many people with information which might lead to a resolution of the investigation will refuse to disclose such information. Investigations will be badly

hampered. Thus, only under very restricted circumstances may the district court require disclosure.”⁴

The Committee acknowledges the importance of the public’s right to review government records and evaluate governmental performance. However, the public’s rights must be balanced against the need to protect the integrity of criminal investigations and people’s right to privacy. Since public agencies look to the standard for judicial review as a guide when determining whether to disclose criminal investigation records, a majority of the Committee agreed that the standard for judicial review should be amended to create a balancing test.

Currently, the district court may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure: (A) is in the public interest; (B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution; (C) would not reveal the identity of any confidential source or undercover agent; (D) would not reveal confidential investigative techniques or procedures not known to the general public; (E) would not endanger the life or physical safety of any person; and (F) would not reveal information which identifies the victim of any sexual offense.⁵ In order for the court to order the disclosure of the records, the court must determine that all six factors are satisfied. The Committee recognized that this is a difficult standard for requestors to meet.

A majority of the Committee agreed that if the disclosure is in the public interest, the court should determine whether that interest is outweighed by the remaining five factors. For example, if a community is in crisis after an officer involved shooting, the court could find that though the disclosure of a certain record would interfere with the criminal investigation, the importance of the public’s interest outweighed the interference with the criminal investigation.

KORA does not include a definition for “public interest.” However, the Kansas Supreme Court in *Harris Enterprises, Inc. v. Moore*,⁶ held that “to be a matter involving public interest, it

⁴ *Harris Enterprises, Inc. v. Moore*, 241 Kan. 59, 67, 734 P.2d 1083 (1987)

⁵ K.S.A. 2018 Supp. 45-221(a)(10)

⁶ 241 Kan. 59, 66, 734 P.2d 1083 (1987)

must be a matter which affects a right or expectancy of the community at large and must derive meaning within the legislative purpose embodied in the statute.” Additionally, the Kansas Court of Appeals clarified that a “[m]ere curiosity about the circumstances surrounding an investigation is not sufficient.”⁷

The “legislative purpose” of KORA is to encourage government transparency.⁸ A majority of the Committee agreed that the definition of public interest needs to go beyond just encouraging government transparency and instead, focus on the common goal of obtaining the disclosure of criminal investigation records – the evaluation of governmental performance. The Committee recommends the following definition of “public interest”:

For the purposes of subsection (a)(10), public interest means more than mere public curiosity. To be a matter involving public interest, it must be a matter which affects a right or expectancy of the community at large and furthers public evaluation of governmental performance.

Therefore, in order to encourage the disclosure of more records and ease the burden on requestors, a majority of the Committee recommends against the amendments in 18 H.B. 2571 and instead recommends the following amendments to K.S.A. 2018 Supp. 45-221(a)(10).

K.S.A. 2018 Supp. 45-221(a)(10)

(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

....

(10)(A) Criminal investigation records, except as provided herein. The district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure is in the public interest and is not outweighed by the harm caused by the following:

⁷ *Seck v. City of Overland Park*, 29 Kan. App. 2d 256, 27 P. 3d 919 (2000)

⁸ See K.S.A. 45-216

~~(A) Is in the public interest;~~

~~(iB) would not interfere interference with any prospective law enforcement action, criminal investigation or prosecution;~~

~~(iiC) would not reveal the release of the identity of any confidential source or undercover agent;~~

~~(iiiD) would not reveal the release of confidential investigative techniques or procedures not known to the general public;~~

~~(ivE) would not endanger the endangerment of the life or physical safety of any person; ~~and~~ or~~

~~(vF) would not reveal the release of the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.~~

(B) For the purposes of subsection (a)(10), public interest means more than mere public curiosity. To be a matter involving public interest, it must be a matter which affects a right or expectancy of the community at large and furthers public evaluation of governmental performance.

(C) If a public record is discretionarily closed by a public agency pursuant to this subsection (a)(10), the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A_i) through (F_v) that necessitate closure of that public record.

....

The Committee drafted and approved these amendments to KSA 45-221(a)(10) at its August meeting. Approval of the amendments was not unanimous. At the Committee's November meeting, a motion was made to reopen the discussion about the amendments approved at the August Meeting. After a second to the motion and discussion, the motion failed.

A minority of the Committee thought that the amendments did not do enough to increase the disclosure of criminal investigation records. Other members of the Committee were concerned that the statute does not specifically allow third-parties, such as, defendants, witnesses, or other law enforcement agencies, to intervene in the process of judicial review of a request for disclosure. Those Committee members argued that all people whose rights could be impacted by the release of the record should have the opportunity to provide arguments and evidence for the court to consider in the balancing test.

Body and Vehicle Camera Records

Within KORA, criminal investigation records include every audio or video recording made by law enforcement using a body camera or vehicle camera.⁹ Both the general criminal investigation records provisions in K.S.A. 2018 Supp. 45-221(a)(10) and the specific body and vehicle camera provisions in K.S.A. 2018 Supp. 45-254 apply to body and vehicle camera records. If the statutes conflict, the more specific statute controls. Therefore, although K.S.A. 2018 Supp. 45-221(a)(10) says the public agency may decide whether to release a criminal investigation record, K.S.A. 2018 Supp. 45-254(b) and (c) requires the public agency to disclose a body or vehicle camera record to a specific list of people (the subject of the recording, his or her family or heir at law, or any of those individual's attorney). In other words, K.S.A. 2018 Supp. 45-254(b) removes the discretion given to the agency in K.S.A. 2018 Supp. 45-221(a)(10).

Body and vehicle camera records are a powerful tool for both law enforcement and the public. While body camera records contain information about an officer's actions, the records also contain very personal and private information about each member of the public recorded by the body camera. Both H.B. 2571 and S.B. 360 proposed amendments to require a public agency to disclose body or vehicle camera records if the record depicted or described a law enforcement officer discharging a firearm or when the use of force by an officer results in great bodily harm or death.

⁹ K.S.A. 2018 Supp. 45-217(c) and 45-254(a)

The Committee agreed that the public has a heightened interest in reviewing the body or vehicle camera records of incidents involving the use of a firearm or use of force by an officer. Body and vehicle camera records can be a valuable tool in evaluating a law enforcement officer's actions. However, a majority of the Committee disagreed with enacting a rule requiring the disclosure of an entire category of records without consideration of the individual facts and circumstances of the case.

Even if the statute were amended to require the disclosure of body or vehicle camera records depicting the use of a firearm or force by a law enforcement officer, the majority of the Committee agreed that the timeframe for disclosure in both bills (5 days and 30 days) is too short. The necessary redaction of the record by the agency could easily take more than 30 days. If the recorded incident had recently occurred, it could take weeks for the agency to do a careful investigation of the incident. The agency's findings are then reviewed by the prosecutor to determine whether criminal charges will be filed. While everyone involved in the incident would like to know whether charges will be filed as soon as possible, it is likely that the process will still take multiple weeks or months. In some cases, if records are disclosed prematurely, the disclosure could taint witness testimony, taint the local jury pool, deprive an officer of his or her right to due process in a criminal or administrative proceeding, or release confidential information.

There is a need to balance the public's need to see the record, law enforcement's need to conduct an uncompromised investigation, and the need to protect the legal rights of all involved. A majority of the Committee agreed that the balance is best evaluated on a case-by-case basis. Under the current KORA statutory framework, the Committee's proposed amendments to the standard for judicial review for all criminal investigation records would also apply to body and vehicle camera records. The Committee believes that the use of a firearm or use of force by an officer will often satisfy the proposed definition of public interest.

Under the current standard for judicial review, if the public agency could show that the disclosure would interfere with a prospective law enforcement action, criminal investigation, or prosecution, then the court could not order disclosure of the record. Under the new proposed

balancing test, the public agency would not only have to show that the disclosure would interfere with the prospective law enforcement action, criminal investigation, or prosecution, it would also have to show that such interference would cause such harm as to outweigh the public interest. Because agencies look to the standard for judicial review for guidance when making the decision whether to disclose criminal investigation records, a majority of the Committee believes the proposed changes to K.S.A. 2018 Supp. 45-211(a)(10) will increase access to body and vehicle camera records.

A minority of the Committee thinks that the balancing test and definition of public interest still present a formidable barrier to disclosure of body and vehicle camera records. The minority of the Committee would prefer more specific rules governing the disclosure of body and vehicle camera records in limited circumstances. A different minority of the Committee would not enact the balancing test because it could elevate the public interest to a point where it jeopardizes a defendant's constitutional right to a fair trial or potentially undermine the criminal investigation.

RECOMMENDATION

A majority of the Committee recommends against the passage of H.B. 2571 and S.B. 360 because the bills' amendments would establish rigid requirements for disclosure and non-disclosure without allowing for a review based on the unique facts and circumstances of each case. However, if changes are made, a majority of the Committee recommends amending K.S.A. 2018 Supp. 45-221(a)(10) to define public interest and make the standard for judicial review a balancing test. Establishing a balancing test will allow for greater disclosure of records by lowering the threshold for disclosure while continuing to require that the decision be made based on the unique facts of each case.

HOUSE BILL No. 2571

By Representative Alcalá

1-30

1 AN ACT concerning the open records act; relating to disclosure of
2 criminal investigation records; disclosure of law enforcement
3 recordings using a body camera or vehicle camera; amending K.S.A.
4 2017 Supp. 45-219, 45-221 and 45-254 and repealing the existing
5 sections.
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2017 Supp. 45-219 is hereby amended to read as
9 follows: 45-219. (a) Any person may make abstracts or obtain copies of
10 any public record to which such person has access under this act. If copies
11 are requested, ~~the public agency may require a written request and advance~~
12 ~~payment of the prescribed fee~~ *payment of copying fees may be required*
13 *prior to the making of copies.* A public agency shall ~~not be required to~~
14 ~~provide copies of public records maintained on computer facilities,~~ radio
15 or recording tapes or discs, video tapes or films, pictures, slides, graphics,
16 illustrations or similar audio or visual items or devices, ~~unless if~~
17 *duplication equipment is available or if* such items or devices were shown
18 or played to a public meeting of the governing body thereof, ~~but the.~~ A
19 public agency shall not be required to provide such items or devices which
20 are copyrighted by a person other than the public agency.

21 (b) Copies of public records shall be made while the records are in
22 the possession, custody and control of the custodian or a person designated
23 by the custodian and shall be made under the supervision of such
24 custodian or person. When practical, copies shall be made in the place
25 where the records are kept. If it is impractical to do so, the custodian shall
26 allow arrangements to be made for use of other facilities. If it is necessary
27 to use other facilities for copying, the cost thereof shall be paid by the
28 person desiring a copy of the records. In addition, the public agency may
29 charge the same fee for the services rendered in supervising the copying as
30 for furnishing copies under subsection (c) and may establish a reasonable
31 schedule of times for making copies at other facilities.

32 (c) Except as provided by subsection (f) or where fees for inspection
33 or for copies of a public record are prescribed by statute, each public
34 agency may prescribe reasonable fees for providing access to or furnishing
35 copies of public records, subject to the following:

36 (1) In the case of fees for copies of records, the fees shall not exceed

1 the actual cost of furnishing copies, including the cost of staff time
2 required to make the information available.

3 (2) In the case of fees for providing access to records maintained on
4 computer facilities, the fees shall include only the cost of any computer
5 services, including staff time required.

6 (3) Fees for access to or copies of public records of public agencies
7 within the legislative branch of the state government shall be established in
8 accordance with K.S.A. 46-1207a, and amendments thereto.

9 (4) Fees for access to or copies of public records of public agencies
10 within the judicial branch of the state government shall be established in
11 accordance with rules of the supreme court.

12 (5) Fees for access to or copies of public records of a public agency
13 within the executive branch of the state government shall be established by
14 the agency head. Any person requesting records may appeal the
15 reasonableness of the fees charged for providing access to or furnishing
16 copies of such records to the secretary of administration whose decision
17 shall be final. A fee for copies of public records which is equal to or less
18 than \$.25 per page shall be deemed a reasonable fee.

19 (d) Except as otherwise authorized pursuant to K.S.A. 75-4215, and
20 amendments thereto, each public agency within the executive branch of
21 the state government shall remit all moneys received by or for it from fees
22 charged pursuant to this section to the state treasurer in accordance with
23 K.S.A. 75-4215, and amendments thereto. Unless otherwise specifically
24 provided by law, the state treasurer shall deposit the entire amount thereof
25 in the state treasury and credit the same to the state general fund or an
26 appropriate fee fund as determined by the agency head.

27 (e) Each public agency of a political or taxing subdivision shall remit
28 all moneys received by or for it from fees charged pursuant to this act to
29 the treasurer of such political or taxing subdivision at least monthly. Upon
30 receipt of any such moneys, such treasurer shall deposit the entire amount
31 thereof in the treasury of the political or taxing subdivision and credit the
32 same to the general fund thereof, unless otherwise specifically provided by
33 law.

34 (f) Any person who is a certified shorthand reporter may charge fees
35 for transcripts of such person's notes of judicial or administrative
36 proceedings in accordance with rates established pursuant to rules of the
37 Kansas supreme court.

38 (g) Nothing in the open records act shall require a public agency to
39 electronically make copies of public records by allowing a person to obtain
40 copies of a public record by inserting, connecting or otherwise attaching
41 an electronic device provided by such person to the computer or other
42 electronic device of the public agency.

43 Sec. 2. K.S.A. 2017 Supp. 45-221 is hereby amended to read as

1 follows: 45-221. (a) Except to the extent disclosure is otherwise required
2 by law, a public agency shall not be required to disclose:

3 (1) Records the disclosure of which is specifically prohibited or
4 restricted by federal law, state statute or rule of the Kansas supreme court
5 or rule of the senate committee on confirmation oversight relating to
6 information submitted to the committee pursuant to K.S.A. 2017 Supp. 75-
7 4315d, and amendments thereto, or the disclosure of which is prohibited or
8 restricted pursuant to specific authorization of federal law, state statute or
9 rule of the Kansas supreme court or rule of the senate committee on
10 confirmation oversight relating to information submitted to the committee
11 pursuant to K.S.A. 2017 Supp. 75-4315d, and amendments thereto, to
12 restrict or prohibit disclosure.

13 (2) Records ~~which~~ *that* are privileged under the rules of evidence,
14 unless the holder of the privilege consents to the disclosure.

15 (3) Medical, psychiatric, psychological or alcoholism or drug
16 dependency treatment records which pertain to identifiable patients.

17 (4) Personnel records, performance ratings or individually identifiable
18 records pertaining to employees or applicants for employment, except that
19 this exemption shall not apply to the names, positions, salaries or actual
20 compensation employment contracts or employment-related contracts or
21 agreements and lengths of service of officers and employees of public
22 agencies once they are employed as such.

23 (5) Information ~~which~~ *that* would reveal the identity of any
24 undercover agent or any informant reporting a specific violation of law.

25 (6) Letters of reference or recommendation pertaining to the character
26 or qualifications of an identifiable individual, except documents relating to
27 the appointment of persons to fill a vacancy in an elected office.

28 (7) Library, archive and museum materials contributed by private
29 persons, to the extent of any limitations imposed as conditions of the
30 contribution.

31 (8) Information ~~which~~ *that* would reveal the identity of an individual
32 who lawfully makes a donation to a public agency, if anonymity of the
33 donor is a condition of the donation, except if the donation is intended for
34 or restricted to providing remuneration or personal tangible benefit to a
35 named public officer or employee.

36 (9) Testing and examination materials, before the test or examination
37 is given or if it is to be given again, or records of individual test or
38 examination scores, other than records ~~which~~ *that* show only passage or
39 failure and not specific scores.

40 (10) Criminal investigation records, except as provided ~~herein in~~
41 *subsection (h)*. ~~The district court, in an action brought pursuant to K.S.A.~~
42 ~~45-222, and amendments thereto, may order disclosure of such records,~~
43 ~~subject to such conditions as the court may impose, if the court finds that~~

1 disclosure:

2 (A) ~~Is in the public interest;~~

3 (B) ~~would not interfere with any prospective law enforcement action,~~
4 ~~criminal investigation or prosecution;~~

5 (C) ~~would not reveal the identity of any confidential source or~~
6 ~~undercover agent;~~

7 (D) ~~would not reveal confidential investigative techniques or~~
8 ~~procedures not known to the general public;~~

9 (E) ~~would not endanger the life or physical safety of any person; and~~

10 (F) ~~would not reveal the name, address, phone number or any other~~
11 ~~information which specifically and individually identifies the victim of any~~
12 ~~sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated,~~
13 ~~prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes~~
14 ~~Annotated, and amendments thereto.~~

15 If a public record is discretionarily closed by a public agency pursuant
16 to this subsection, the record custodian, upon request, shall provide a
17 written citation to the specific provisions of paragraphs (A) through (F)
18 that necessitate closure of that public record.

19 (11) Records of agencies involved in administrative adjudication or
20 civil litigation, compiled in the process of detecting or investigating
21 violations of civil law or administrative rules and regulations, if disclosure
22 would interfere with a prospective administrative adjudication or civil
23 litigation or reveal the identity of a confidential source or undercover
24 agent.

25 (12) Records of emergency or security information or procedures of a
26 public agency, or plans, drawings, specifications or related information for
27 any building or facility ~~which~~ *that* is used for purposes requiring security
28 measures in or around the building or facility or ~~which~~ *that* is used for the
29 generation or transmission of power, water, fuels or communications, if
30 disclosure would jeopardize security of the public agency, building or
31 facility.

32 (13) The contents of appraisals or engineering or feasibility estimates
33 or evaluations made by or for a public agency relative to the acquisition of
34 property, prior to the award of formal contracts therefor.

35 (14) Correspondence between a public agency and a private
36 individual, other than correspondence ~~which~~ *that* is intended to give notice
37 of an action, policy or determination relating to any regulatory, supervisory
38 or enforcement responsibility of the public agency or ~~which~~ *that* is widely
39 distributed to the public by a public agency and is not specifically in
40 response to communications from such a private individual.

41 (15) Records pertaining to employer-employee negotiations, if
42 disclosure would reveal information discussed in a lawful executive
43 session under K.S.A. 75-4319, and amendments thereto.

1 (16) Software programs for electronic data processing and
2 documentation thereof, but each public agency shall maintain a register,
3 open to the public, that describes:

4 (A) The information—~~which~~ *that* the agency maintains on computer
5 facilities; and

6 (B) the form in which the information can be made available using
7 existing computer programs.

8 (17) Applications, financial statements and other information
9 submitted in connection with applications for student financial assistance
10 where financial need is a consideration for the award.

11 (18) Plans, designs, drawings or specifications—~~which~~ *that* are
12 prepared by a person other than an employee of a public agency or records
13 ~~which~~ *that* are the property of a private person.

14 (19) Well samples, logs or surveys—~~which~~ *that* the state corporation
15 commission requires to be filed by persons who have drilled or caused to
16 be drilled, or are drilling or causing to be drilled, holes for the purpose of
17 discovery or production of oil or gas, to the extent that disclosure is
18 limited by rules and regulations of the state corporation commission.

19 (20) Notes, preliminary drafts, research data in the process of
20 analysis, unfunded grant proposals, memoranda, recommendations or
21 other records in which opinions are expressed or policies or actions are
22 proposed, except that this exemption shall not apply when such records are
23 publicly cited or identified in an open meeting or in an agenda of an open
24 meeting.

25 (21) Records of a public agency having legislative powers, which
26 records pertain to proposed legislation or amendments to proposed
27 legislation, except that this exemption shall not apply when such records
28 are:

29 (A) Publicly cited or identified in an open meeting or in an agenda of
30 an open meeting; or

31 (B) distributed to a majority of a quorum of any body ~~which~~-*that* has
32 authority to take action or make recommendations to the public agency
33 with regard to the matters to which such records pertain.

34 (22) Records of a public agency having legislative powers, which
35 records pertain to research prepared for one or more members of such
36 agency, except that this exemption shall not apply when such records are:

37 (A) Publicly cited or identified in an open meeting or in an agenda of
38 an open meeting; or

39 (B) distributed to a majority of a quorum of any body—~~which~~ *that* has
40 authority to take action or make recommendations to the public agency
41 with regard to the matters to which such records pertain.

42 (23) Library patron and circulation records—~~which~~ *that* pertain to
43 identifiable individuals.

- 1 (24) Records ~~which~~ *that* are compiled for census or research purposes
2 and ~~which~~ *that* pertain to identifiable individuals.
- 3 (25) Records ~~which~~ *that* represent and constitute the work product of
4 an attorney.
- 5 (26) Records of a utility or other public service pertaining to
6 individually identifiable residential customers of the utility or service.
- 7 (27) Specifications for competitive bidding, until the specifications
8 are officially approved by the public agency.
- 9 (28) Sealed bids and related documents, until a bid is accepted or all
10 bids rejected.
- 11 (29) Correctional records pertaining to an identifiable inmate or
12 release, except that:
- 13 (A) The name; photograph and other identifying information;
14 sentence data; parole eligibility date; custody or supervision level;
15 disciplinary record; supervision violations; conditions of supervision,
16 excluding requirements pertaining to mental health or substance abuse
17 counseling; location of facility where incarcerated or location of parole
18 office maintaining supervision and address of a releasee whose crime was
19 committed after the effective date of this act shall be subject to disclosure
20 to any person other than another inmate or releasee, except that the
21 disclosure of the location of an inmate transferred to another state pursuant
22 to the interstate corrections compact shall be at the discretion of the
23 secretary of corrections;
- 24 (B) the attorney general, law enforcement agencies, counsel for the
25 inmate to whom the record pertains and any county or district attorney
26 shall have access to correctional records to the extent otherwise permitted
27 by law;
- 28 (C) the information provided to the law enforcement agency pursuant
29 to the sex offender registration act, K.S.A. 22-4901 et seq., and
30 amendments thereto, shall be subject to disclosure to any person, except
31 that the name, address, telephone number or any other information which
32 specifically and individually identifies the victim of any offender required
33 to register as provided by the Kansas offender registration act, K.S.A. 22-
34 4901 et seq., and amendments thereto, shall not be disclosed; and
- 35 (D) records of the department of corrections regarding the financial
36 assets of an offender in the custody of the secretary of corrections shall be
37 subject to disclosure to the victim, or such victim's family, of the crime for
38 which the inmate is in custody as set forth in an order of restitution by the
39 sentencing court.
- 40 (30) Public records containing information of a personal nature where
41 the public disclosure thereof would constitute a clearly unwarranted
42 invasion of personal privacy.
- 43 (31) Public records pertaining to prospective location of a business or

1 industry where no previous public disclosure has been made of the
2 business' or industry's interest in locating in, relocating within or
3 expanding within the state. This exception shall not include those records
4 pertaining to application of agencies for permits or licenses necessary to
5 do business or to expand business operations within this state, except as
6 otherwise provided by law.

7 (32) Engineering and architectural estimates made by or for any
8 public agency relative to public improvements.

9 (33) Financial information submitted by contractors in qualification
10 statements to any public agency.

11 (34) Records involved in the obtaining and processing of intellectual
12 property rights that are expected to be, wholly or partially vested in or
13 owned by a state educational institution, as defined in K.S.A. 76-711, and
14 amendments thereto, or an assignee of the institution organized and
15 existing for the benefit of the institution.

16 (35) Any report or record ~~which~~ that is made pursuant to K.S.A. 65-
17 4922, 65-4923 or 65-4924, and amendments thereto, and ~~which~~ that is
18 privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments
19 thereto.

20 (36) Information ~~which~~ that would reveal the precise location of an
21 archeological site.

22 (37) Any financial data or traffic information from a railroad
23 company, to a public agency, concerning the sale, lease or rehabilitation of
24 the railroad's property in Kansas.

25 (38) Risk-based capital reports, risk-based capital plans and
26 corrective orders including the working papers and the results of any
27 analysis filed with the commissioner of insurance in accordance with
28 K.S.A. 40-2c20 and 40-2d20, and amendments thereto.

29 (39) Memoranda and related materials required to be used to support
30 the annual actuarial opinions submitted pursuant to K.S.A. 40-409(b), and
31 amendments thereto.

32 (40) Disclosure reports filed with the commissioner of insurance
33 under K.S.A. 40-2,156(a), and amendments thereto.

34 (41) All financial analysis ratios and examination synopses
35 concerning insurance companies that are submitted to the commissioner by
36 the national association of insurance commissioners' insurance regulatory
37 information system.

38 (42) Any records the disclosure of which is restricted or prohibited by
39 a tribal-state gaming compact.

40 (43) Market research, market plans, business plans and the terms and
41 conditions of managed care or other third-party contracts, developed or
42 entered into by the university of Kansas medical center in the operation
43 and management of the university hospital ~~which~~ that the chancellor of the

1 university of Kansas or the chancellor's designee determines would give an
2 unfair advantage to competitors of the university of Kansas medical center.

3 (44) The amount of franchise tax paid to the secretary of revenue or
4 the secretary of state by domestic corporations, foreign corporations,
5 domestic limited liability companies, foreign limited liability companies,
6 domestic limited partnership, foreign limited partnership, domestic limited
7 liability partnerships and foreign limited liability partnerships.

8 (45) Records, other than criminal investigation records, the disclosure
9 of which would pose a substantial likelihood of revealing security
10 measures that protect: (A) Systems, facilities or equipment used in the
11 production, transmission or distribution of energy, water or
12 communications services; (B) transportation and sewer or wastewater
13 treatment systems, facilities or equipment; or (C) private property or
14 persons, if the records are submitted to the agency. For purposes of this
15 paragraph, security means measures that protect against criminal acts
16 intended to intimidate or coerce the civilian population, influence
17 government policy by intimidation or coercion or to affect the operation of
18 government by disruption of public services, mass destruction,
19 assassination or kidnapping. Security measures include, but are not limited
20 to, intelligence information, tactical plans, resource deployment and
21 vulnerability assessments.

22 (46) Any information or material received by the register of deeds of
23 a county from military discharge papers, DD Form 214. Such papers shall
24 be disclosed: To the military dischargee; to such dischargee's immediate
25 family members and lineal descendants; to such dischargee's heirs, agents
26 or assigns; to the licensed funeral director who has custody of the body of
27 the deceased dischargee; when required by a department or agency of the
28 federal or state government or a political subdivision thereof; when the
29 form is required to perfect the claim of military service or honorable
30 discharge or a claim of a dependent of the dischargee; and upon the written
31 approval of the commissioner of veterans affairs, to a person conducting
32 research.

33 (47) Information that would reveal the location of a shelter or a
34 safehouse or similar place where persons are provided protection from
35 abuse or the name, address, location or other contact information of
36 alleged victims of stalking, domestic violence or sexual assault.

37 (48) Policy information provided by an insurance carrier in
38 accordance with K.S.A. 44-532(h)(1), and amendments thereto. This
39 exemption shall not be construed to preclude access to an individual
40 employer's record for the purpose of verification of insurance coverage or
41 to the department of labor for their business purposes.

42 (49) An individual's email address, cell phone number and other
43 contact information ~~which~~ *that* has been given to the public agency for the

1 purpose of public agency notifications or communications which are
2 widely distributed to the public.

3 (50) Information provided by providers to the local collection point
4 administrator or to the 911 coordinating council pursuant to the Kansas
5 911 act, and amendments thereto, upon request of the party submitting
6 such records.

7 (51) Records of a public agency on a public website ~~which~~ that are
8 searchable by a keyword search and identify the home address or home
9 ownership of a law enforcement officer as defined in K.S.A. 2017 Supp.
10 21-5111, and amendments thereto, parole officer, probation officer, court
11 services officer or community correctional services officer. Such
12 individual officer shall file with the custodian of such record a request to
13 have such officer's identifying information restricted from public access on
14 such public website. Within 10 business days of receipt of such requests,
15 the public agency shall restrict such officer's identifying information from
16 such public access. Such restriction shall expire after five years and such
17 officer may file with the custodian of such record a new request for
18 restriction at any time.

19 (52) Records of a public agency on a public website ~~which~~ that are
20 searchable by a keyword search and identify the home address or home
21 ownership of a federal judge, a justice of the supreme court, a judge of the
22 court of appeals, a district judge, a district magistrate judge, a municipal
23 judge, the United States attorney for the district of Kansas, an assistant
24 United States attorney, a special assistant United States attorney, the
25 attorney general, an assistant attorney general, a special assistant attorney
26 general, a county attorney, an assistant county attorney, a special assistant
27 county attorney, a district attorney, an assistant district attorney, a special
28 assistant district attorney, a city attorney, an assistant city attorney or a
29 special assistant city attorney. Such person shall file with the custodian of
30 such record a request to have such person's identifying information
31 restricted from public access on such public website. Within 10 business
32 days of receipt of such requests, the public agency shall restrict such
33 person's identifying information from such public access. Such restriction
34 shall expire after five years and such person may file with the custodian of
35 such record a new request for restriction at any time.

36 (53) Records of a public agency that would disclose the name, home
37 address, zip code, email address, phone number or cell phone number or
38 other contact information for any person licensed to carry concealed
39 handguns or of any person who enrolled in or completed any weapons
40 training in order to be licensed or has made application for such license
41 under the personal and family protection act, K.S.A. 2017 Supp. 75-7c01
42 et seq., and amendments thereto, shall not be disclosed unless otherwise
43 required by law.

1 (54) Records of a utility concerning information about cyber-security
2 threats, attacks or general attempts to attack utility operations provided to
3 law enforcement agencies, the state corporation commission, the federal
4 energy regulatory commission, the department of energy, the southwest
5 power pool, the North American electric reliability corporation, the federal
6 communications commission or any other federal, state or regional
7 organization that has a responsibility for the safeguarding of
8 telecommunications, electric, potable water, waste water disposal or
9 treatment, motor fuel or natural gas energy supply systems.

10 (55) Records of a public agency containing information or reports
11 obtained and prepared by the office of the state bank commissioner in the
12 course of licensing or examining a person engaged in money transmission
13 business pursuant to K.S.A. 9-508 et seq., and amendments thereto, shall
14 not be disclosed except pursuant to K.S.A. 9-513c, and amendments
15 thereto, or unless otherwise required by law.

16 (b) Except to the extent disclosure is otherwise required by law or as
17 appropriate during the course of an administrative proceeding or on appeal
18 from agency action, a public agency or officer shall not disclose financial
19 information of a taxpayer which may be required or requested by a county
20 appraiser or the director of property valuation to assist in the determination
21 of the value of the taxpayer's property for ad valorem taxation purposes; or
22 any financial information of a personal nature required or requested by a
23 public agency or officer, including a name, job description or title
24 revealing the salary or other compensation of officers, employees or
25 applicants for employment with a firm, corporation or agency, except a
26 public agency. Nothing contained herein shall be construed to prohibit the
27 publication of statistics, so classified as to prevent identification of
28 particular reports or returns and the items thereof.

29 (c) As used in this section, the term "cited or identified" shall not
30 include a request to an employee of a public agency that a document be
31 prepared.

32 (d) If a public record contains material ~~which~~ that is not subject to
33 disclosure pursuant to this act, the public agency shall separate or delete
34 such material and make available to the requester that material in the
35 public record ~~which~~ that is subject to disclosure pursuant to this act. If a
36 public record is not subject to disclosure because it pertains to an
37 identifiable individual, the public agency shall delete the identifying
38 portions of the record and make available to the requester any remaining
39 portions ~~which~~ that are subject to disclosure pursuant to this act, unless the
40 request is for a record pertaining to a specific individual or to such a
41 limited group of individuals that the individuals' identities are reasonably
42 ascertainable, the public agency shall not be required to disclose those
43 portions of the record ~~which~~ that pertain to such individual or individuals.

1 (e) The provisions of this section shall not be construed to exempt
2 from public disclosure statistical information not descriptive of any
3 identifiable person.

4 (f) Notwithstanding the provisions of subsection (a), any public
5 record ~~which~~ *that* has been in existence more than 70 years shall be open
6 for inspection by any person unless disclosure of the record is specifically
7 prohibited or restricted by federal law, state statute or rule of the Kansas
8 supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and
9 amendments thereto.

10 (g) Any confidential records or information relating to security
11 measures provided or received under the provisions of subsection (a)(45)
12 shall not be subject to subpoena, discovery or other demand in any
13 administrative, criminal or civil action.

14 (h) *(1) Except as provided in K.S.A. 2017 Supp. 45-254, and*
15 *amendments thereto, a public agency shall not disclose criminal*
16 *investigation records while such investigation is active. An investigation*
17 *becomes inactive upon the occurrence of any of the following events:*

18 (A) *A decision by the law enforcement agency not to pursue the case;*

19 (B) *expiration of the time to bring a charge or file a complaint under*
20 *the applicable statute of limitations, or 30 years after the commission of*
21 *the offense, whichever comes earliest; or*

22 (C) *exhaustion of or expiration of all rights of appeal by a person*
23 *convicted on the basis of the criminal investigation records.*

24 (2) *Criminal investigation records related to an inactive investigation*
25 *shall be disclosed, unless disclosure:*

26 (A) *Would interfere with any prospective law enforcement action,*
27 *criminal investigation or prosecution;*

28 (B) *reveal the identity of any confidential source or undercover*
29 *agent;*

30 (C) *reveal confidential investigative techniques or procedures not*
31 *known to the general public;*

32 (D) *endanger the life or physical safety of any person; or*

33 (E) *reveal the name, address, phone number or any other information*
34 *that specifically and individually identifies the victim of any sexual offense*
35 *in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their*
36 *repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and*
37 *amendments thereto.*

38 (3) *If a public record is discretionarily closed by a public agency*
39 *pursuant to this subsection, the record custodian, upon request, shall*
40 *provide a written citation to the specific provisions of subsection (h)(2)*
41 *that necessitate closure of that public record.*

42 (4) *Except as provided in K.S.A. 2017 Supp. 45-254, and amendments*
43 *thereto, any audio or video recording made and retained by law*

1 enforcement using a body camera or vehicle camera as defined by K.S.A.
2 2017 Supp. 45-254, and amendments thereto, that is part of an inactive
3 investigative file and that constitutes a clearly unwarranted invasion of
4 personal privacy as defined in K.S.A. 45-517(b), and amendments thereto,
5 shall not be disclosed, except that the existence of the recording shall be
6 disclosed to any person requesting access to the inactive investigative file.

7 (5) The district court, in an action brought pursuant to K.S.A. 45-
8 222, and amendments thereto, may order disclosure of any criminal
9 investigation records, subject to such conditions as the court may impose,
10 if the court finds that disclosure:

11 (A) Is in the public interest;

12 (B) would not interfere with any prospective law enforcement action,
13 criminal investigation or prosecution;

14 (C) would not reveal the identity of any confidential source or
15 undercover agent;

16 (D) would not reveal confidential investigative techniques or
17 procedures not known to the general public;

18 (E) would not endanger the life or physical safety of any person; and

19 (F) would not reveal the name, address, phone number or any other
20 information that specifically and individually identifies the victim of any
21 sexual offense in article 35 of chapter 21 of the Kansas Statutes
22 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
23 Statutes Annotated, and amendments thereto.

24 Sec. 3. K.S.A. 2017 Supp. 45-254 is hereby amended to read as
25 follows: 45-254. (a) Every audio or video recording made and retained by
26 law enforcement using a body camera or a vehicle camera shall be
27 considered a criminal investigation record as defined in K.S.A. 45-217,
28 and amendments thereto. The provisions of this subsection shall expire on
29 July 1, 2021, unless the legislature reviews and reenacts this provision
30 pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2021.

31 (b) In addition to any disclosure authorized pursuant to the open
32 records act, K.S.A. 45-215 et seq., and amendments thereto, a person
33 described in subsection (c) may request to listen to an audio recording or
34 to view a video recording made by a body camera or a vehicle camera. The
35 law enforcement agency shall allow the person to listen to the requested
36 audio recording or to view the requested video recording *within 24 hours*
37 *after making the request*, and may charge a reasonable fee for such
38 services provided by the law enforcement agency.

39 (c) Any of the following may make a request under subsection (b):

40 (1) A person who is a subject of the recording;

41 (2) a parent or legal guardian of a person under 18 years of age who
42 is a subject of the recording;

43 (3) an attorney for a person described in subsection (c)(1) or (c)(2);

1 and

2 (4) an heir at law, an executor or an administrator of a decedent, or
3 *an individual who has secured a written release from the next of kin of a*
4 *decedent, when the decedent is a subject of the recording.*

5 (d) *A law enforcement agency shall disclose any audio or video*
6 *recording made and retained by the agency using a body camera or a*
7 *vehicle camera within five business days after a request is made by any*
8 *person, if the recording depicts or describes:*

9 (1) *The discharge of a firearm by a law enforcement officer in the*
10 *course of duty, other than the discharge of a firearm for training purposes,*
11 *or the killing of an animal that is sick, injured or dangerous; or*

12 (2) *the use of force by a law enforcement officer that results in great*
13 *bodily harm or death.*

14 (e) (1) *A law enforcement agency shall redact or obscure specific*
15 *portions of any audio or video recording before disclosure that:*

16 (A) *Depicts the death of a person, a dead body, or clearly visible acts*
17 *of severe violence or great bodily harm against a person, unless the death*
18 *or act was caused by a law enforcement officer;*

19 (B) *depicts nudity or sexual conduct as defined in K.S.A. 2017 Supp.*
20 *21-6402, and amendments thereto;*

21 (C) *reveals the identity of any confidential source or undercover*
22 *agent;*

23 (D) *reveals confidential investigative techniques or procedures not*
24 *known to the general public;*

25 (E) *endangers the life or physical safety of any person;*

26 (F) *reveals the name, address, phone number or any other*
27 *information that specifically and individually identifies the victim of any*
28 *sexual offense in article 35 of chapter 21 of the Kansas Statutes*
29 *Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas*
30 *Statutes Annotated, and amendments thereto;*

31 (G) *identifies a minor under the age of 16 or undermines the*
32 *confidentiality requirements for juvenile records as provided in chapter 38*
33 *of the Kansas Statutes Annotated, and amendments thereto;*

34 (H) *includes confidential medical information or personal*
35 *information as defined in K.S.A. 2017 Supp. 50-7a01, and amendments*
36 *thereto; or*

37 (I) *reveals the name or license plate number of a person not arrested,*
38 *cited, charged or issued a written warning.*

39 (2) *This subsection shall not apply to requests made by a person*
40 *described in subsection (c).*

41 (f) (1) *A law enforcement agency may redact or obscure specific*
42 *portions of any audio or video recording before disclosure that reveals the*
43 *identity of a law enforcement officer who is subject to an internal*

1 *investigation as a result of an event depicted in the recording, except as*
2 *provided in subsection (f)(2).*

3 (2) (A) *A law enforcement agency shall not redact the identity of a*
4 *law enforcement officer after the agency has concluded the investigation*
5 *or rendered a decision as to final disciplinary action, and the records*
6 *previously withheld, redacted or obscured under this section shall be made*
7 *available for public inspection and copying.*

8 (B) *If such investigation lasts for longer than 270 days, video and*
9 *audio recordings not disclosed, redacted or obscured under this section*
10 *shall be made available for public inspection and copying.*

11 (g) *As used in this section:*

12 (1) "Body camera" means a device that is worn by a law enforcement
13 officer that electronically records audio or video of such officer's activities.

14 (2) "Heir at law" means: (A) *The spouse of the decedent, if living; (B)*
15 *if there is no living spouse of the decedent, an adult child of the decedent,*
16 *if living; or (C) if there is no living spouse or adult child, a parent of the*
17 *decedent, if living. It shall be the responsibility of the heir at law to show*
18 *proof of the familial relationship.*

19 (3) "Vehicle camera" means a device that is attached to a law
20 enforcement vehicle that electronically records audio or video of law
21 enforcement officers' activities.

22 Sec. 4. K.S.A. 2017 Supp. 45-219, 45-221 and 45-254 are hereby
23 repealed.

24 Sec. 5. This act shall take effect and be in force from and after its
25 publication in the statute book.

SENATE BILL No. 360

By Committee on Judiciary

2-1

1 AN ACT concerning the open records act; relating to copies of records;
2 disclosure of law enforcement recordings using a body camera or
3 vehicle camera; amending K.S.A. 2017 Supp. 45-219 and 45-254 and
4 repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2017 Supp. 45-219 is hereby amended to read as
8 follows: 45-219. (a) Any person may make abstracts or obtain copies of
9 any public record to which such person has access under this act. If copies
10 are requested, ~~the public agency may require a written request and advance~~
11 ~~payment of the prescribed fee~~ *payment of copying fees may be required*
12 *prior to the making of copies.* A public agency shall ~~not be required to~~
13 ~~provide copies of~~ *public records maintained on computer facilities,* radio
14 or recording tapes or discs, video tapes or films, pictures, slides, graphics,
15 illustrations or similar audio or visual items or devices, ~~unless if~~
16 *duplication equipment is available or if* such items or devices were shown
17 or played to a public meeting of the governing body thereof, ~~but the.~~ A
18 public agency shall not be required to provide such items or devices which
19 are copyrighted by a person other than the public agency.

20 (b) Copies of public records shall be made while the records are in
21 the possession, custody and control of the custodian or a person designated
22 by the custodian and shall be made under the supervision of such
23 custodian or person. When practical, copies shall be made in the place
24 where the records are kept. If it is impractical to do so, the custodian shall
25 allow arrangements to be made for use of other facilities. If it is necessary
26 to use other facilities for copying, the cost thereof shall be paid by the
27 person desiring a copy of the records. In addition, the public agency may
28 charge the same fee for the services rendered in supervising the copying as
29 for furnishing copies under subsection (c) and may establish a reasonable
30 schedule of times for making copies at other facilities.

31 (c) Except as provided by subsection (f) or where fees for inspection
32 or for copies of a public record are prescribed by statute, each public
33 agency may prescribe reasonable fees for providing access to or furnishing
34 copies of public records, subject to the following:

35 (1) In the case of fees for copies of records, the fees shall not exceed
36 the actual cost of furnishing copies, including the cost of staff time

1 required to make the information available.

2 (2) In the case of fees for providing access to records maintained on
3 computer facilities, the fees shall include only the cost of any computer
4 services, including staff time required.

5 (3) Fees for access to or copies of public records of public agencies
6 within the legislative branch of the state government shall be established in
7 accordance with K.S.A. 46-1207a, and amendments thereto.

8 (4) Fees for access to or copies of public records of public agencies
9 within the judicial branch of the state government shall be established in
10 accordance with rules of the supreme court.

11 (5) Fees for access to or copies of public records of a public agency
12 within the executive branch of the state government shall be established by
13 the agency head. Any person requesting records may appeal the
14 reasonableness of the fees charged for providing access to or furnishing
15 copies of such records to the secretary of administration whose decision
16 shall be final. A fee for copies of public records which is equal to or less
17 than \$.25 per page shall be deemed a reasonable fee.

18 (d) Except as otherwise authorized pursuant to K.S.A. 75-4215, and
19 amendments thereto, each public agency within the executive branch of
20 the state government shall remit all moneys received by or for it from fees
21 charged pursuant to this section to the state treasurer in accordance with
22 K.S.A. 75-4215, and amendments thereto. Unless otherwise specifically
23 provided by law, the state treasurer shall deposit the entire amount thereof
24 in the state treasury and credit the same to the state general fund or an
25 appropriate fee fund as determined by the agency head.

26 (e) Each public agency of a political or taxing subdivision shall remit
27 all moneys received by or for it from fees charged pursuant to this act to
28 the treasurer of such political or taxing subdivision at least monthly. Upon
29 receipt of any such moneys, such treasurer shall deposit the entire amount
30 thereof in the treasury of the political or taxing subdivision and credit the
31 same to the general fund thereof, unless otherwise specifically provided by
32 law.

33 (f) Any person who is a certified shorthand reporter may charge fees
34 for transcripts of such person's notes of judicial or administrative
35 proceedings in accordance with rates established pursuant to rules of the
36 Kansas supreme court.

37 (g) Nothing in the open records act shall require a public agency to
38 electronically make copies of public records by allowing a person to obtain
39 copies of a public record by inserting, connecting or otherwise attaching
40 an electronic device provided by such person to the computer or other
41 electronic device of the public agency.

42 Sec. 2. K.S.A. 2017 Supp. 45-254 is hereby amended to read as
43 follows: 45-254. (a) Every audio or video recording made and retained by

1 law enforcement using a body camera or a vehicle camera shall be
2 considered a criminal investigation record as defined in K.S.A. 45-217,
3 and amendments thereto. The provisions of this subsection shall expire on
4 July 1, 2021, unless the legislature reviews and reenacts this provision
5 pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2021.

6 (b) In addition to any disclosure authorized pursuant to the open
7 records act, K.S.A. 45-215 et seq., and amendments thereto, a person
8 described in subsection (c) may request to listen to an audio recording or
9 to view a video recording made by a body camera or a vehicle camera. The
10 law enforcement agency shall allow the person to listen to the requested
11 audio recording or to view the requested video recording *within 24 hours*
12 *after making the request*, and may charge a reasonable fee for such
13 services provided by the law enforcement agency.

14 (c) Any of the following may make a request under subsection (b):

15 (1) A person who is a subject of the recording;

16 (2) a parent or legal guardian of a person under 18 years of age who
17 is a subject of the recording;

18 (3) an attorney for a person described in subsection (c)(1) or (c)(2);
19 and

20 (4) an heir at law, an executor or an administrator of a decedent, or
21 *an individual who has secured a written release from the next of kin of a*
22 *decedent*, when the decedent is a subject of the recording.

23 (d) *A law enforcement agency shall disclose any audio or video*
24 *recording made and retained by the agency using a body camera or a*
25 *vehicle camera within 30 days after a request is made by any person, if the*
26 *recording depicts or describes:*

27 (1) *The discharge of a firearm by a law enforcement officer in the*
28 *course of duty, other than the discharge of a firearm for training purposes,*
29 *or the killing of an animal that is sick, injured or dangerous; or*

30 (2) *the use of force by a law enforcement officer that results in great*
31 *bodily harm or death.*

32 (e) (1) *A law enforcement agency shall redact or obscure specific*
33 *portions of any audio or video recording before disclosure that:*

34 (A) *Depicts the death of a person, a dead body, or clearly visible acts*
35 *of severe violence or great bodily harm against a person, unless the death*
36 *or act was caused by a law enforcement officer;*

37 (B) *depicts nudity or sexual conduct as defined in K.S.A. 2017 Supp.*
38 *21-6402, and amendments thereto;*

39 (C) *reveals the identity of any confidential source or undercover*
40 *agent;*

41 (D) *reveals confidential investigative techniques or procedures not*
42 *known to the general public;*

43 (E) *endangers the life or physical safety of any person;*

1 (F) reveals the name, address, phone number or any other
2 information that specifically and individually identifies the victim of any
3 sexual offense in article 35 of chapter 21 of the Kansas Statutes
4 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
5 Statutes Annotated, and amendments thereto;

6 (G) identifies a minor under the age of 16 or undermines the
7 confidentiality requirements for juvenile records as provided in chapter 38
8 of the Kansas Statutes Annotated, and amendments thereto;

9 (H) includes confidential medical information or personal
10 information as defined in K.S.A. 2017 Supp. 50-7a01, and amendments
11 thereto; or

12 (I) reveals the name or license plate number of a person not arrested,
13 cited, charged or issued a written warning.

14 (2) This subsection shall not apply to requests made by a person
15 described in subsection (c).

16 (f) (1) A law enforcement agency may redact or obscure specific
17 portions of any audio or video recording before disclosure that reveals the
18 identify of a law enforcement officer who is subject to an internal
19 investigation as a result of an event depicted in the recording, except as
20 provided in subsection (f)(2).

21 (2) (A) A law enforcement agency shall not redact the identity of a
22 law enforcement officer after the agency has concluded the investigation
23 or rendered a decision as to final disciplinary action, and the records
24 previously withheld, redacted or obscured under this section shall be made
25 available for public inspection and copying.

26 (B) If such investigation lasts for longer than 270 days, video and
27 audio recordings not disclosed, redacted or obscured under this section
28 shall be made available for public inspection and copying.

29 (g) As used in this section:

30 (1) "Body camera" means a device that is worn by a law enforcement
31 officer that electronically records audio or video of such officer's activities.

32 (2) "Great bodily harm" means bodily injury that creates a
33 substantial risk of death or causes serious, permanent disfigurement or
34 protracted loss or impairment of the function of any body part or organ.

35 (3) "Heir at law" means: (A) The spouse of the decedent, if living; (B)
36 if there is no living spouse of the decedent, an adult child of the decedent,
37 if living; or (C) if there is no living spouse or adult child, a parent of the
38 decedent, if living. It shall be the responsibility of the heir at law to show
39 proof of the familial relationship.

40 (4) "Vehicle camera" means a device that is attached to a law
41 enforcement vehicle that electronically records audio or video of law
42 enforcement officers' activities.

43 Sec. 3. K.S.A. 2017 Supp. 45-219 and 45-254 are hereby repealed.

1 Sec. 4. This act shall take effect and be in force from and after its
2 publication in the statute book.