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#### In the District Court of Wyandotte County, Kansas Civil Department

Roc Nation LLC, et al	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 2024-CV-000836
	)	K.S.A. Ch. 60
Unified Government of Wyandotte	)	Div. 2
County/Kansas City, Kansas, et.al.,	)	
	)	
Defendants.	)	
•	) )	

## Motion to Dismiss and Deny Plaintiff's Request for Declaratory Judgment and Memorandum in Support

Defendants Unified Government of Wyandotte County/Kansas City, Kansas and Kansas City, Kansas Police Department move for an order to dismiss Plaintiffs' Roc Nation LLC's et al claims for failure to state a claim upon which relief can be granted under K.S.A. 60-212(b)(6) and to deny Plaintiffs' requests for declaratory judgment under K.S.A. 45-222 and K.S.A. 60-257. Defendants submit the following memorandum in support of their motion.

#### Background

In response to an open records request made by Attorney Kristen Dupard on behalf of Roc Nation and the Midwest Innocence Project through the Unified Government's online open records request portal (NextRequest), Defendants provided several records, but denied in good faith the release of records related to some of Plaintiffs' requests. Defendants contend that the records not released, are subject to discretionary closure under the Kansas Open Records Act ("KORA"), specifically K.S.A. 45-22l(a)(4), K.S.A. 45-221(a)(10), K.S.A. 45-221(a)(11), K.S.A. 45-221(a)(30) and K.S.A. 45-218(e). Additionally, the public interest in releasing the records does not outweigh the application of relevant exceptions. Therefore, the issue is whether the exceptions argued by Defendants apply and whether the public interest in disclosing the records overrides the statutory exceptions which are applicable through the Kansas Open Records Act.

If the Court determines that the records at issue are not protected by the exceptions argued by Defendants, then Defendants further argue that portions must still be redacted prior to release, because they contain personal identifying information of witnesses, complainants, and employees as well as information related to ongoing civil litigation and pending criminal prosecutions.

Pursuant to K.S.A. 45-222, under which this action is brought, the Court shall determine the matter de novo and is entitled to an in-camera review of the records at issue. Because the court shall review this matter de novo, Defendants have attached exhibits relevant to the court's review which were not provided as part of Plaintiffs' petition.

#### Statement of Facts

Defendants contend the material facts are limited to the following:

- 1. On November 16, 2023, Plaintiffs, through counsel, filed a Kansas Open Records Request with the Unified Government through the Unified Government's online open records system, NextRequest<sup>1</sup>. (Petition, Exhibit C).
- 2. The request included 16 "Requests for Production", most of which included multiple subparts. (Petition, Exhibit C).
- 3. On December 12, 2023, "due to the extensive and complex nature of this request", defendants provided an anticipated cost of \$2,202.48 associated with researching, compiling, and reviewing potentially responsive records related to the requests and requested advance payment to complete the request.<sup>2</sup> (Petition, Exhibit D; and Defendants' Exhibit 1, pg. 28-29).
- 4. On January 9, 2024, Plaintiffs paid the invoice in the amount of \$2,202.48. (Petition, ¶ 151; Defendants; Exhibit 1, pg. 26).
- 5. On January 11, 2024, Defendants released open records responsive to Plaintiffs' Request Nos. 6, 10, 12, 13, and 16, along with a letter addressing the rest of the requests and communication through NextRequest that document review was continuing, and additional documents would be uploaded. (Petition, Exhibit E; Defendants Exhibit 1,

<sup>&</sup>lt;sup>1</sup> NextRequest is the Unified Government of Wyandotte County/Kansas City, KS Online Kansas Open Records. Portal. Link attached: <u>Open Public RecordsNextRequest - Modern FOIA & Public Records Request Software</u>. The event timeline related to this request is attached as Defendants' Exhibit 1.

<sup>&</sup>lt;sup>2</sup> Plaintiff RocNation made a previous KORA request to Defendants in 2021, with similar, but fewer categories more limited in scope for Requests for Production; followed by initiating suit in Wyandotte County District Court, Case No. 2021-CV-000631, which was dismissed on December 11, 2024.

pg. 25-26).

- 6. On January 22, 2024, Defendants released several more records responsive to Plaintiffs' Request Nos. 10 and 12 and communication through NextRequest that review of Request No. 6 was pending and required additional time for review. (Defendants Exhibit 1, pg. 23-24).
- 7. On February 27th, 2024, Defendants released additional records responsive to Plaintiffs' Request No. 16 and communication through NextRequest that review of Request No. 6 was pending and required additional time for review. (Petition, Exhibit Q; Defendants Exhibit 1, pg. 22).
- 8. On March 7<sup>th</sup>, 2024, Defendants released an additional record responsive to Plaintiffs' Request No. 16. (Petition, Exhibit R; Defendants Exhibit 1, pg. 21-22).
- 9. On March 12<sup>th</sup>, 2024, Defendants provided the following communication through NextRequest related to Plaintiffs' Request No. 6: "Concerning request #6, the email search with key words from your initial request yielded over 23,000 emails. A cursory review of some of the messages found none that were responsive to your request. Review of all these messages may increase the cost to process this request, as it will take an extended period of time and there may be no responsive records. Would you like to narrow your request?". (Petition, ¶ 58, Exhibit T, pg. 4; Defendants Exhibit 1, pg. 21).

- 10. On March 15<sup>th</sup>, 2024, Defendants released additional records responsive to Plaintiffs' Request No. 16. (Petition, Exhibit S; Defendants Exhibit 1, pg. 11-13, 16-18).
- 11. On March 20, 2024, Defendants sent a follow-up communication to Plaintiffs notifying them that Defendants were awaiting a response regarding narrowing the request related to Request No. 6. (Defendants Exhibit 1, pg. 10-11).
- 12. On April 1, 2024, Plaintiffs responded through NextRequest and submitted a letter disputing Defendants' responses related to Plaintiffs' requested records. (Petition, Exhibit (T); Defendants Exhibit 1, pg. 10).
- 13. On April 3, 2024, Defendants provided the following communication through NextRequest related to Plaintiffs' Request No. 6: "This request is being extended to provide a response to your letter dated April 1 and for your response about narrowing request #6. The search terms used for request #6 were: 2006 and MOU or Memorandum of Understanding and DOJ or Department of Justice and/or FBI or Federal Bureau of Investigation. Please let us know if you would like to narrow this request." (Defendants Exhibit 1, pg. 10).
- 14. On April 15, 2024, Defendants responded to Plaintiffs' letter dated April 1, 2024, and submitted a letter through NextRequest supplying additional information related to the applicable Kansas Open Records Act exceptions regarding Plaintiffs' Requests No. 1-5, No. 7, No. 8-9, No. 11 and 14, and

- No. 15. (Petition, Exhibit G; Defendants Exhibit 1, pg. 9).
- 15. On May 6<sup>th</sup>, 2024, Defendants again communicated to Plaintiffs through NextRequest, advising them that the request "is being extended because we are awaiting your response concerning narrowing request #6."

  (Defendants Exhibit 1, pg. 9).
- 16. On May 9<sup>th</sup>, 2024, Defendants received a letter from Plaintiffs addressed to the Department of Administration, and Kansas Attorney General, specifically related to Plaintiffs' original Request No. 15 but referred to as Request for Production No. 1: "Any coroners' reports, autopsy reports, police reports, jail records, and mugshots, of applicable, for any person who has died while in the custody of KCKPD or in jail." (Defendants Exhibit 1, pg. 8).
- 17. On June 20, 2024, Wyandotte County Sheriff's Office staff released multiple records responsive to Plaintiffs' Request No. 15. (Defendants' Exhibit 1, pg. 6-7).
- 18. On June 26, 2024, Defendants provided the following communication through NextRequest related to Plaintiffs' Request No. 6: "This request is being extended to July 17, 2024, as we are awaiting your response about narrowing request #6. If we do not receive a response by then, we intend to refund any unused portion of your payment and close this request."

  (Defendants Exhibit 1, pg. 6).
- 19. On July 17, 2024, Defendants provided the following communication

through NextRequest: "We have identified and released additional responsive records related to request #15. We have not received a response concerning narrowing request #6. As such, we have asked our accounting department to issue a refund in the amount of \$715.08, the unused portion of your payment and we will close this request." (Petition, ¶ 159; Defendants' Exhibit 1, pg.6).

- 20. On October 23, 2024, Plaintiffs requested that the NextRequest portal be reopened and Defendants reopened the request on October 28, 2024.
  (Petition, Exhibit V; Defendants' Exhibit 1, pg.5).
- 21. On October 28, 2024, Defendants uploaded into NextRequest a letter from Plaintiffs dated October 23, 2024 disputing Defendants' responses related to Plaintiffs' requested records and included additional terms ("and complaint or investigation or violation") for Defendants to use in the search related to Plaintiffs' Request No. 6. (Petition, Exhibit U; Defendants Exhibit 1, pg. 4-5).
- 22. On October 28, 2024, Defendants provided the following communication through NextRequest related to Plaintiffs' Request No. 6: "We have received your letter dated October 23, 2024. Please note that on March 12, 2024, we notified you that the initial search for request #6 yielded over 23,000 emails and asked if you would like to narrow this request. This request was extended several times, in one to two week increments, awaiting your response on this issue. On June 26, 2024, we notified you

that we were extending the request until July 17, 2024, as we were still awaiting your response about narrowing request #6 and if no response was received by then we would close the request. When no response was received, the request was closed on July 17, 2024. We will have the email search re-run with your additional terms: "and complaint or investigation or violation." We will reopen and extend this request to November 13, 2024, to allow time to review and respond." (Petition, Exhibit V; Defendants Exhibit 1, pg. 4-5).

- 23. On October 31, 2024, and November 6, 2024, Plaintiffs provided two communications through NextRequest, again disputing response by Defendants related to Requests No. 1-6 and accepting the November 13, 2024, deadline allowing Defendants to conduct another email search with Plaintiffs' new search terms. (Petition, ¶ 61, Exhibit W; Defendants Exhibit 1, pg. 2-4).
- 24. On November 12, 2024, Defendants provided the following and final communication through NextRequest related to Plaintiffs' requests and applicable exceptions under the Kansas Open Records Act: "Request numbers 1-5 These requests are denied pursuant to KSA 45-221(a)(4), (a)(10), (a)(11) and (a)(30) and 45-218(e). Request #3 is additionally denied pursuant to KSA 45-219(a). Identifying and providing a detailed description of any complaint would disclose personnel records or individually identifiable records pertaining to employees and constitute a

clearly unwarranted invasion of personal privacy. KSA 45-221(a)(4) provides that a public agency is not required to disclose "Personnel" records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries or actual compensation employment contracts or employment-related contracts or agreements and lengths of service of officers and employees of public agencies once they are employed as such." Further, identifying whether a particular employee has been the subject of a complaint would disclose personnel records not required to be provided under (a)(4) and constitute an unwarranted invasion of personal privacy under (a)(30). Request number 6 The original search was conducted for KCKPD emails. We requested the search be re-run with the additional terms. The process caused technical issues that impacted the department's email system. Running further searches and/or reviewing the over 23,000 results of the original search places an unreasonable burden on the department. Thus, this request is denied pursuant to KSA 45-218(e)." (Petition, ¶ 61-63, 121, Exhibit X; Defendants Exhibit 1, pg. 1-2).

- 25. Plaintiffs then filed this action on November 19, 2024. (Petition).
- 26. Multiple high-profile cases, both criminal and civil, have been ongoing during the pendency of Plaintiffs' KORA request, which involve parties included in Plaintiffs' Request Nos. 2, 3, 4, 5, 8 and 9. (Petition, Exhibit C;

- Defendants MTD, Paragraphs 27-30).
- 27. Deirdre Coones v. Unified Government, et al is a federal lawsuit alleging civil rights violations against the Unified Government and former KCKPD employees to include William Michael, Angela Garrison, Bryan Block, Susan Brown, Anthony Sanchez, and "Unknown officers of the Kansas City, Kansas Police Department". 3
- 28. Michelle Houcks et al. v. Unified Government, et al is a federal lawsuit alleging civil rights violations against the Unified Government and former KCKPD employees to include Thomas Dailey, James Swafford, Ronald Miller, Roger Golubski, Terry Zeigler, Michael Kill, Clayton Bye, and Dennis Ware.<sup>4</sup>
- 29. Jermeka Hobbs v. Unified Government, et al is a federal lawsuit alleging civil rights violations against the Unified Government and former KCKPD employees to include Thomas Dailey, James Swafford, Ronald Miller, Samuel Breshears, Rick Armstrong, Ellen Hanson, Roger Golubski, Michael Kill, Clayton Bye, Terry Zeigler, and Dennis Ware.<sup>5</sup>
- 30. United States v. Cecil Brooks, et al and United States v. Golubski are federal criminal indictments alleging multiple crimes, including color of

<sup>&</sup>lt;sup>3</sup> Case pending; filed November 10, 2022, in United States District Court for the District of Kansas, Civil Action No. 2:22-CV-02447. Notably Lindsay Runnels of Morgan Pilate LLC is listed as co-counsel for Plaintiff Coones.

<sup>&</sup>lt;sup>4</sup> Case pending; filed November 3, 2023, in United States District Court for the District of Kansas, Civil Action No. 2:23-CV-02489.

<sup>&</sup>lt;sup>5</sup> Case pending; filed September 13, 2024, in United States District Court for the District of Kansas, Civil Action No. 2:24-CV-02422.

law violations against Roger Golubski.6

#### **Argument and Authority**

Despite several inaccuracies pled as facts in their petition, even when viewed in the light most favorable to Plaintiffs, Plaintiffs fail to state a claim upon which relief can be granted under K.S.A. 60-212(b)(6). Plaintiffs' requests for declaratory judgment in their favor is not proper under the facts of this case and should be denied. Plaintiffs' request for other appropriate relief is not supported by sufficient facts and therefore should be denied. Further, Defendants' denial of access to the records at issue was made in good faith with a reasonable basis in fact or law, and therefore Plaintiffs' request for costs and attorneys' fees should also be denied, should the court find in favor of Plaintiffs.

## I. Plaintiffs have failed to state a claim upon which relief can be granted.

In accordance with K.S.A. 45-218(a), the Kansas Open Records Act rests on the presumption that all public records are generally open for inspection. However, specific categories of information and records are explicitly exempted by the Act, leaving it to the discretion of the agency whether to produce them or not. K.S.A. 45-221(a). If the plain language of an exemption is not clear and unambiguous, then courts should construe the exemption narrowly so as to

<sup>&</sup>lt;sup>6</sup> *United States v. Brooks, et al*, No. 5:22-CR-40086, Sealed Grand Jury Indictment November 10, 2022, is pending. *United States v. Golubski*, No. 5:22-CR-40055, Sealed Grand Jury Indictment September 14, 2022, is no longer pending.

promote disclosure. Salina Journal v. Brownback, 54 Kan. App. 2d 1, 16 (2017). However, the "liberal construction rule" is only applied if the statute is ambiguous. Id.

The burden is on the public agency opposing the disclosure to prove the exemption applies. *Id.* Additionally, the "interpretation of KORA is a question of law" for the courts to decide. *State, Dep't of Soc. & Rehab. Servs. v. Pub. Employee Relations Bd. of Kansas Dep't of Human Res.*, 249 Kan. 163, 166 (1991).

"Public record" means any recorded information, regardless of form, characteristics or location, which is made, maintained or kept by or is in the possession of: (A) Any public agency; or (B) any officer or employee of a public agency pursuant to the officer's or employee's official duties and which is related to the functions, activities, programs or operations of any public agency. K.S.A. 45-217(j)(1). Therefore, while Plaintiffs framed their open records request as a "Request for Production" usually used in the process of discovery, KORA does not require Defendants to respond to questions or provide information outside the scope of "public records". Additionally, public agencies are not required to create records they do not already possess or prepare records in a certain form. Atty. Gen. Op. 91-50.7

K.S.A. 45-222 provides for the enforcement under the Kansas Open Records Act by injunction, mandamus, declaratory judgement or other appropriate

<sup>&</sup>lt;sup>7</sup> Attached as Defendants Exhibit 2.

order, in an action brought by any person. Plaintiff seeks a declaratory judgment from the court under K.S.A. 60-257, declaring that Defendants have filed to comply with KORA, declaring that the requested documents are subject to disclosure, declaring that the fees charged by Defendants are excessive and unreasonable and to enforce disclosure of the records Defendants denied based on exceptions in K.S.A. 45-221, and seek remittance and costs associated with those requests. (Petition, paragraph (20).

Courts of record within their respective jurisdictions shall have power to declare the rights, status, and other legal relations whether or not further relief is, or could be sought. K.S.A. 60-1701. "The function of a declaratory judgment action pursuant to K.S.A. 60-1701 is to provide a speedy and flexible method for determining the rights and obligations of parties in cases of actual controversy where there is actual antagonistic assertion and denial of right." *Board of County Com'rs of Reno County v. Asset Management and Marketing, LLC*, 18 P.3d 286, 289 (Kan. Ct. App. 2001).

# II. Defendants' application of exceptions under the Kansas Open Records Act was proper.

K.S.A. 45-221(a) provides a list of 55 exemptions to required disclosure under the Kansas Open Records Act. The application of the exceptions is a matter of statutory interpretation. "The most fundamental rule of statutory interpretation is that the intent of the legislature governs if that intent can be ascertained. *State ex* 

rel. Schmidt v. City of Wichita, 303 Kan. 650, 659, 367 P.3d 282 (2016). In determining the intent of the legislature, appellate courts must first look to the plain language of the statute in question. Ullery v. Othick, 304 Kan. 405, 409, 372 P.3d 1135 (2016). During the examination of the plain language of the statute, appellate courts must give common words their ordinary meanings. 304 Kan. at 409, 372 P.3d 1135. If the legislature's intent is clear under the plain language of the statute, then no further analysis should occur. 304 Kan. at 409, 372 P.3d 1135. Importantly, appellate courts should not speculate about the legislature's intent when it is clearly stated in the statute." 304 Kan. at 409, 372 P.3d 1135, Salina J. v. Brownback, 54 Kan. App. 2d 1, 8–9, 394 P.3d 134, 140 (2017).

#### Plaintiffs' Request No. 1

Plaintiffs' request No. 1 seeks the following records:

- "Any complaints, whether formal or informal, filed against any member of the investigative division of the KCKPD or documented by the KCKPD's investigative division pertaining to, but not limited to:
- a. Providing, stealing, procuring, or selling illegal drugs, either personally or through an intermediary;
- b. Harassing or retaliating against residents in patrolling the neighborhood or community, including any threats of arrest, beatings, or prosecution;
- c. Inappropriate relationships or sexual encounters with members of the community and/or any sexual assaults, harassments, or rapes of members of the community, either in the course of official duty or while off duty;
- d. Tampering with, fabricating, destroying, or illegally disposing of evidence;
- e. Knowingly eliciting false information, identifications, or testimony;
- f. Failing to document exculpatory witness statements that correct or conflict with other statements of evidence or which constitute a retraction of a prior statement;
- g. Failing to document exculpatory or impeachment evidence that is favorable to a suspect or defendant;

- h. Failing to investigate or take proper investigative steps including following leads or closing a case without a proper basis; or
- i. Any other misconduct, by any member of the KCKPD's Detective Bureau. (Petition, Exhibit C).

The time period associated with this request is January 1, 2013, to November 16, 2023. (Petition, Exhibit C).

Defendants denied disclosure of this request pursuant to KSA 45-221(a)(4) (personnel records), KSA 45-221(a)(10) (criminal investigation records), KSA 45-221(a)(11) (records of agencies involved in administrative adjudication or civil litigation if disclosure would interfere with a prospective administrative adjudication or proceeding or reveal a confidential source) and KSA 45-221(a)(30) (public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. (Petition, ¶ 68, Exhibit E).

Plaintiffs argue that Defendants' reliance on those exemptions is improper. (Petition, paragraph 68). While Defendants agree that the application of KSA 45-221(a)(10)(A-F) and KSA 45-221(a)(11) may only apply to some records at issue, their reliance on KSA 45-221(a)(4) and (a)(30) is applicable to all records associated with this request. "Any complaints, whether formal or informal...pertaining to...(i) any other misconduct, by any member of the KCKPD's Detective Bureau" is a broad catchall category, but limited to an identifiable group of personnel (employees in the Investigative Division/Detective Bureau). As discussed below, any such record would fall under the definition of a personnel record.

Plaintiff argues that any concern regarding privacy under KSA 45-221(a)(30) could be remedied through redactions. However, Plaintiffs' subsequent requests (Nos. 3, 4, and 5) all refer to and incorporate Requests No. 1 and 2, making any disclosure of those records without identifying the employee implausible.

#### Plaintiffs' Request No. 2

Plaintiffs' request No. 2 seeks the following records:

Without date limitation (emphasis added), any and all complaints, whether formal or informal, written or oral, against the following:

- a. James Shepherd
- b. Terry Zeigler
- c. Steve Haulmark
- d. Bryan Block
- e. Darren Koberlein
- f. Dion Dundovich
- g. William K. Smith
- h. Michael Shomin
- i. Dennis Ware
- j. Richard Nepote
- k. Michael Warczakoski
- l. Lawrence Rasnic
- m. Gregory Bradley
- n. Patrick Greeno
- o. Dustin Sillings
- p. Rodney Smith
- q. Jason Vaughn
- r. Henry Callahan
- s. Donald Ash
- t. Ronald Miller
- u. Michael Vivian
- v. Eric Jones
- w. Shawn Buck
- x. Terry Mast
- y. Vincent Davenport
- z. Michael Kill
- aa. Clayton Bye
- bb. Robert Lane

cc. William Saunders dd. William ("Bill") Michael (Petition, Exhibit C).

Again, Defendants denied disclosure of this request pursuant to KSA 45-221(a)(4) (personnel records), KSA 45-221(a)(10) (criminal investigation records), KSA 45-221(a)(11) (records of agencies involved in administrative adjudication or civil litigation if disclosure would interfere with a prospective administrative adjudication or proceeding or reveal a confidential source) and KSA 45-221(a)(30) (public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. (Petition, ¶ 68, Exhibit E).

Defendants agree that the application of KSA 45-221(a)(10)(A-F) and KSA 45-221(a)(11) may only apply to some records at issue, their reliance on KSA 45-221(a)(4) and (a)(30) is applicable to all records associated with this request. Because any record released under this request would automatically be associated with the listed employee, redacting personal identifiers would be irrelevant in complying with KSA 45-221(a)(30). Again, Plaintiffs' subsequent requests (Nos. 3, 4, and 5) all refer to and incorporate Requests No. 1 and 2 which further compound the application of KSA 45-221(a)(30). As related to KSA 45-221(a)(11) several of the parties listed in Plaintffs' request are named Defendants in pending civil litigation, and release of associated records could interfere with those matters. (Defendants MTD, ¶¶ 27-29).

#### Plaintiffs' Requests No. 3-5

The same exceptions that Defendants applied to Requests No. 1 and No. 2 apply to Requests Nos. 3-5 because those requests incorporate No. 1 and No. 2.

#### Plaintiffs' Request No. 3 seeks the following records:

For each complaint identified in Request No. 1 and 2 (emphasis added), please also provide:

- a. Date, time, and location of the alleged incidents in the complaint and whether there is video footage of the incident (YES, NO, malfunctioned, not activated, etc.). If Yes, provide the video footage;
- b. Age, race, ethnicity, and gender of each individual involved in a complaint;
- c. Division, badge/ID number, unit number, KS CPOST complaint form file number, patrol/assignment, rank, years of experience, age, race, ethnicity, gender, height, and weight for all officers named in the complaint;
- d. Whether any of the alleged incidents in the complaint resulted in civil lawsuits, civil trials, civil settlements, civil findings of liability, criminal charges, criminal trials, or criminal convictions;
- e. Whether any police officers within KCKPD were witnesses to any of the incidents alleged in the complaint;
- f. Occupation, to the extent known, of the complainants involved. (Petition, Exhibit C).

Additionally, Defendants argue that KSA 45-219(a), which provides that "a public agency shall not be required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices, unless such items or devices were shown or played to a public meeting of the governing body thereof, but the public agency shall not be required to provide such items or devices which are copyrighted by a person other than the public agency" is applicable to subsection (a) of Plaintiffs Request No. 3.

#### Plaintiffs' Request No. 4 seeks the following records:

Documents pertaining to any investigation, including any internal or

administrative investigation, against any member of the KCKPD investigative division for engaging in any activity complained of in *Request No. 1 and 2* (emphasis added). (Petition, Exhibit C)

#### Plaintiffs' Request No. 5 seeks the following records

Documents pertaining to any disciplinary actions (e.g., sustained or founded; not sustained or unresolved; or unfounded) against any member of the KCKPD investigative division arising from or alleging any activity identified in *Request No. 1 and 2* (emphasis added). (Petition, Exhibit C).

#### K.S.A. 45-221(a)(4) – personnel records

In denying Plaintiffs' requests for investigation records and disciplinary actions as related to Requests No. 1 through 5, Defendants applied K.S.A. 45-221(a)(4) – "Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries or actual compensation employment contracts or employment-related contracts or agreements and lengths of service of officers and employees of public agencies once they are employed as such." K.S.A. 45-221.

To apply this exception a public agency must establish: 1) that the information requested constitutes a public record concerning personnel records, performance ratings, or individually identifiable information; 2) that the public record belongs to a public agency; and 3) that the public record pertains to employees or applicants for employment. *Salina Journal*, 54 Kan. App. 2d at 1.

Defendants are a public agency and the records at issue are related to employees. So, the question is narrowed to – do the records at issue constitute a personnel record, a performance rating, or individually identifiable information? Whether a specific record meets this definition is a fact specific question but may in part be determined by examining the nature, content, use of and general internal access to the record in question. A.G. Opin. No. 91-127.8

This may require an in-camera review by this Court. However, given the request was for "investigation records" and "disciplinary actions" related to complaints made against Investigation Bureau employees, the plain language of K.S.A. 45-221(a)(4) indicates the exception applies to the records at issue, as they are created and maintained to determine criminal or disciplinary action against an employee and access is only given to those who are investigating, those who are reviewing, and those who are administering the discipline associated with the complaint and resulting investigation. Further, the definition of "files" in K.S.A. 75-4379(g)(1) specifically includes "disciplinary actions and internal investigation files".

Investigation records related to a complaint received regarding an employee, specifically a police department employee, is investigated by the Internal Affairs Unit, and is either classified as a criminal complaint or an administrative complaint. (Exhibit 4, KCKPD Internal Affairs SOP). Both the

<sup>&</sup>lt;sup>8</sup> Attached as Defendants Exhibit 3.

investigating officers as well as the records associated with the investigation are kept physically and electronically separate from the rest of the Police Department. (Exhibit 4, KCKPD Internal Affairs SOP). Once the criminal allegations are resolved, either through declination by the District Attorney's Office or other prosecuting agency or inactivation because of lack of sufficient evidence, the records are used in the administrative investigation of the employee – to determine what discipline is appropriate. If an outside law enforcement agency conducts the investigation, once it is complete, the Internal Affairs unit uses those investigation records to complete its administrative investigation to determine if discipline is appropriate. (Exhibit 4, KCKPD Internal Affairs SOP). The criminal and administrative investigations are separate to comply with the United States Supreme Court ruling in *Garrity v. New Jersey*, 385 U.S. 493 (1967), and the use of compelled statements in an administrative investigation.

These investigations are considered confidential in nature within the Department and are not open to any other employee other than to legal counsel, the Fraternal Order of Police Lodge 4 representative, and command staff supervisors for review and issuance of discipline. (Exhibit 4, KCKPD Internal Affairs SOP). Even the target employee (the employee being investigated) cannot have access to the internal affairs investigation records, other than his own statement. (Exhibit 4, KCKPD Internal Affairs SOP). Additionally, the Unified Government Human Resources Guide addresses the confidentiality of

personnel records in its policy and includes that "Breaches of the confidentiality of personnel files and other employee information shall be subject to discipline, up to and including discharge." (Exhibit 5, 2.14 – Employee Privacy and Access to Personnel Records).

#### Legislative Intent and Statutory Comparison

The Kansas Court of Appeals in *Salina v. Brownback* found the plain language of the personnel records exception to be clear and unambiguous as to the legislature's intent. *Salina J. v. Brownback*, 54 Kan. App. 2d 1, 23, 394 P.3d 134, 147 (2017). And as previously argued, if the legislature's intent is clear under the plain language of a statute, then no further analysis should occur. *Ullery v. Othick*, 304 Kan. at 409, 372 P.3d 1135.

A review of other Kansas statutes and Attorney General Opinions support that the Kansas Legislature's intent to keep records related to investigations involving police personnel private. "We believe that the legislature intended to allow closure of personnel/employment records identifiable to an individual public employee no matter where the record is kept, except for names, positions, salaries and lengths of service." Atty Gen. Op. 97-052.9

#### Commission on Peace Officers' Standards and Training Repository

K.S.A. 74-5611a which codifies the rules associated with maintaining a central registry of all Kansas police officers or law enforcement officers was

<sup>&</sup>lt;sup>9</sup> Attached as Defendants Exhibit 6.

amended in 2018 adding a confidentiality provision regarding law enforcement records and providing more specific rules for disclosure. All law enforcement agencies are required to report when an officer is terminated or when an officer resigns and the circumstances surrounding that termination or resignation to the Commission on Peace Officers' Standards and Training (commonly referred to as CPOST). K.S.A. 74-5611a(d). CPOST then decides whether the officer's certification will be withdrawn.

Notably, K.S.A. 74-5611a clearly states that the records contained in the registry are confidential and shall not be disclosed but for specific purposes:

- (2) The purpose of the registry is to be a resource for all agencies who appoint or elect police or law enforcement officers to use when reviewing employment applications of such officers. The registry shall include all records received or created by the commission pursuant to this section and all records related to violations of the Kansas law enforcement training act, including, but not limited to, records of complaints received or maintained by the commission.
- (3) All records contained in the registry are confidential and shall not be disclosed pursuant to the Kansas open records act, except such records may be disclosed as provided in subsections (a)(4) and (a)(5) and the Kansas administrative procedure act.

### Law Enforcement Officer Applicants, File and Information Sharing by Law Enforcement Agencies

K.S.A. 75-4379 was originally passed by the Kansas Legislature in 2018. It requires that "a hiring agency shall require each applicant interviewed by such agency for a law enforcement officer position who has been employed by another state or local law enforcement agency or governmental agency to execute a written waiver that: (1) Explicitly authorizes each state or local law enforcement agency or

governmental agency that has employed the applicant to disclose the applicant's files to the hiring agency; and (2) releases the hiring agency and each state or local law enforcement agency or governmental agency that employed the applicant from any liability related to the use and disclosure of the applicant's files. An applicant who refuses to execute the written waiver shall not be considered for employment by the hiring agency. The hiring agency shall include the written waiver with each request for information submitted to a state or local law enforcement agency or governmental agency that has employed the applicant.

Most importantly, K.S.A. 75-4379(g)(1) defines "files":

"Files" means all performance reviews or other files related to job performance, commendations, administrative files, grievances, previous personnel applications, personnel-related claims, disciplinary actions, internal investigation files, suspensions, investigation-related leave, documents concerning termination or other departure from employment, all complaints and all early warning information. "Files" shall not include nonperformance documents or data, including, but not limited to, medical files, schedules, pay and benefit information or similar administrative data or information. [emphasis added]

Not only does K.S.A. 75-4379 indicate the legislature's intent to close police employee files to all but for a specifically delineated few, it specifies its intent to include "disciplinary actions" and "internal investigation files" as personnel files. Therefore, it's clear that the records at issue here, constitute "personnel records".

#### Discovery

Under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972), the government is obliged to provide exculpatory and

impeachment materials to criminal defendants. Brady imposes a duty on the prosecution to disclose evidence in its possession that is both exculpatory and material either to guilt or punishment. 373 U.S. at 87; see United States v. Bagley, 473 U.S. 667, 676 (1985). These obligations extend so far as to require that, upon request, the government must examine the personnel files of all law enforcement officers involved in a case for evidence of perjurious conduct, dishonesty, specific instances of insubordination or deceitful behavior, documentation such as lying to superior officers or filing false reports. See, e.g., United States v. Wright, 00-4024-01/25-SAC, 2001 WL 523394 (D. Kan. Apr. 26, 2001). If a defendant outlines a legitimate basis to believe government agents may have Brady or Giglio evidence for example, information that might be used to impeach a law enforcement officer likely to be a trial witness—a court may make an in camera inspection of personnel records or similar files to identify and release such information. State v. Bunyard, 369 P.3d 342 (Kan. Ct. App. 2016), rev'd, 307 Kan. 463, 410 P.3d 902 (2018) citing, Shields, 789 F.3d at 747–48; United States v. Williams, 576 F.3d 1149, 1163 (10th Cir. 2009). The procedure courts use in reviewing such personnel records in camera, again indicates the confidential nature of the records.

This is further supported by regular use of protective orders in discovery through Fed. R. Civ. P. 26(c) and K.S.A. 60-226(c) in which the subject matter is a personnel record.

#### Identifiable Individuals

Plaintiff argues that even as personnel records, the investigation records and disciplinary actions should be redacted and released to the public. K.S.A. 45-221(d) requires that "If a public record contains material that is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record that is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions that are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record that pertain to such individual or individuals. [emphasis added]"

As previously discussed, Requests No. 1 and No. 2 pertain to a limited group of individuals. Because of the limited group of individuals that the records request applied to, and because Defendants had already provided identifying information related to that limited group of individuals, the release of investigation records and disciplinary actions related to those individuals would make their identities reasonably ascertainable.

#### **Public Policy**

K.S.A. 45-221(a)(4) does not include a "public interest" exception to the

exception as does K.S.A. 45-221(a)(10) and (a)(30). However, a brief discussion regarding the public policy supporting non-disclosure of such records is beneficial as it supports the application of the exception. Non-elected personnel of government employers have privacy rights in their personnel records, which is important to ensure government employers can be competitive in finding quality employees. See State v. Board of Education, 13 Kan. App. 2d 117, 119 (1988) (concluding "personnel matters" exceptions in the Kansas Open Meetings Act "protect privacy rights of employees, save personal reputations, and encourage qualified people to remain in government employ").

Further, protecting the identity of complainants, witnesses, and the employee involved in a personnel investigation as well as the facts those individuals may disclose during the investigation, encourages cooperation in such investigations. Additionally, confidentiality in such investigations fosters a safer environment for complainants to come forward and for witnesses to be forthcoming without fear of retaliation or retribution from other members of the Department or from the employee that is a subject of the investigation. If the goal is to hold public employees accountable, it is imperative that those individuals are able to be forthcoming without concern that their words will be disclosed to the public at large.

#### K.S.A. 45-221(a)(10) – Criminal investigation records

Police Department Internal Affairs records often overlap with categories of records which would include criminal investigation records. While K.S.A. 45-

221(a)(10) is not applicable to all records related to Requests No. 1 – 5, it applies in relation to some of the records. Because criminal investigation records are used in the administrative investigation of an employee and determination of discipline against an employee, the most specific statutory exception remains the personnel records exception. But because they are both relevant under the facts of this case, Defendants argue that K.S.A. 45-221(a)(10) is appropriate. A more thorough analysis of the criminal investigation records exception is provided below.

#### K.S.A. 45-221(a)(30) – Privacy

The right to privacy is both a Constitutional Right under the 4<sup>th</sup> Amendment and a State right. Kansas law recognizes the invasion of the right to privacy as "a tort upon which a cause of action may be based." *Froelich v. Adair*, 516 P.2d 993, 995 (Kan. 1973). Consistent with those rights, it is an exception addressed in K.S.A. 45-221.

Like the criminal investigation records exception, K.S.A. 45-221(a)(30) is also applicable in matters relating to personnel records. K.S.A. 45-221(a)(30) exempts "public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

The Kansas Open Records Act's (KORA) privacy exception to disclosure is intended to exempt personal information in government records that relates to the intimate details of a person's private life, and the public's right to have

access to information contained in government records is thus qualified by the protection of an individual's right to maintain the privacy of personal information having no bearing on matters of public interest. *Data Tree*, *LLC v*. *Meek*, 2005, 109 P.3d 1226, 279 Kan. 445. Whether public disclosure would constitute a clearly unwarranted invasion of personal privacy is determined by comparative weighing of antagonistic interests, with privacy interest in nondisclosure balanced against general rule of inspection and its underlying policy of openness to the public; the circumstances of a given case affect the weighing or balancing of interests. *Id*.

#### Public Interest as it applies to K.S.A. 45-221(a)(10) and (a)(30)

A "public interest" supporting disclosure of criminal investigation records under the Kansas Open Records Act (KORA) 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; mere curiosity about the circumstances surrounding an investigation is not sufficient. K.S.A. 45-221(a)(10). Seck v. City of Overland Park, 2000, 27 P.3d 919, 29 Kan.App.2d 256.

Once public interest in disclosure of criminal investigation files has been shown, the custodian of records has burden to show that disclosure would interfere with some prospective law enforcement action, reveal identity of confidential source or undercover agent, reveal confidential and investigation techniques, or endanger life or safety of some person. K.S.A. 45-221(a)(10) (A-E). *Harris Enterprises, Inc. v. Moore*, 1987, 241 Kan. 59, 734 P.2d 1083.

Once requester of public records meets burden of proving disclosure of criminal investigation files was in public interest, it was within discretion of trial court to make in-camera inspection of records and to find that they contained no information disclosure of which would promote public interest. K.S.A. 45-221(a)(10)(A), 45-222. *Id.* Only under very restricted circumstances may the district court require disclosure of criminal investigation records. K.S.A. 45-221(a)(10). *Id.* 

Even in matters that are investigated but not prosecuted, closure authority still exists even if no criminal prosecution takes place; records qualifying as criminal investigation records may be closed, as long as the investigation was done by criminal law enforcement agency trying to determine if any crime occurred. Seck v. City of Overland Park, 29 Kan. App. 2d 256 (2000).

#### Plaintiffs request No. 6

Plaintiffs requested: "All documents and communications in reaction to the FBI's investigations into the KCKPD. All documents and communications concerning complaints of civil rights violations allegedly committed by members of the investigative or patrol division of the KCKPD submitted to the FBI and/or DOJ pursuant to the 2006 Memorandum of Understanding between the Unified Government or Wyandotte County/Kansas City, Kansas, and the DOJ. (Petition, Exhibit C).

Defendants performed a search on their email servers to locate potentially responsive records, and the search yielded over 23,000 emails. (Petition, ¶ 57, 119;

Defendants Exhibit 1, pg. 21). Emails must be reviewed prior to release, and during a cursory review, it was determined that none of the 30 reviewed emails were responsive. (Petition, ¶ 58, Exhibit G; Defendants Exhibit 1, pg. 21). Examples of non-responsive messages included emails concerning grant applications, grant processes and newsletters sent to multiple employees which include the names of federal agencies. (Petition, Exhibit G). Given the initial search terms yielded a burdensome and seemingly unresponsive set of emails, Defendants asked Plaintiffs if they wished to narrow their request by providing different search terms. (Petition, ¶ 58; Defendants Exhibit 1, pg. 21). After 5 unanswered communications from Defendants to Plaintiffs asking how they wanted to handle Request No. 6, Plaintiffs ultimately provided additional search terms on October 28, 2024. (Petition, Exhibit U; Defendant's Exhibit 1, pg. 4-5). The additional search terms did not resolve the issue, as re-running the search resulted in technical issues that impacted the department's email system. (Petition, ¶¶ 62, 121, Exhibit X; Defendant's Exhibit 1, pg. 2).

Plaintiffs' claims that Defendants violated KORA for failing to interpose any objections or exemptions are unwarranted. Defendants made multiple attempts to work with Plaintiffs to reach a solution that would work for both parties. Ultimately, because of the broad search terms used in Plaintiffs request, the number of emails and impact to the Defendants email system created an unreasonable burden. Pursuant to K.S.A. 45-218(e), the custodian may refuse to provide access to a public record, or to permit inspection, if a request places an unreasonable burden in producing public

records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency.

#### Plaintiffs' Request No. 8 and No. 9

Defendants denied Plaintiffs' Request No. 8: "Any documents concerning any complaints or investigations pertaining to Golubski," and No. 9: All communications with or regarding Golubski regarding: (i) Golubski's work or conduct for the KCKPD investigative division or Detective Bureau or (ii) Golubski's actions or role as a reserve officer from 2010 until termination from that role in approximately 2014 or 2015," pursuant to K.S.A. 45-221(a)(4), (a)(10), and (a)(11). (Petition, ¶ 131, Exhibit E).

Defendants incorporate all previous arguments related to the application of KSA 45-221(a)(4) above. Any records responsive to Plaintiffs' requests would be personnel records as defined in (a)(4). Further, any records responsive to these requests continue to be relevant in the lawsuits pending against the Unified Government and other named Defendants. Disclosure of such records, as previously argued above, would interfere with litigating these matters properly, and therefore are exempt from disclosure pursuant to K.SA. 45-221(a)(11).

Defendants agree that it failed to delineate which subsection under KSA 45-221(a)(10) applies as related to the criminal investigation records exception and responsive records related to Plaintiffs' requests. However, even Plaintiffs acknowledge that there may be records reasonably exempt as related to prospective law enforcement actions, criminal investigations or prosecutions. (Petition, para.

136). At the time of originally asserting KSA 45-221(a)(10), Golubski was pending prosecution of two indictments in Federal Court. The applicable sections are KSA 45-221(a)(10)(A) and (B), as disclosing such information would not be in the public interest as it could potentially interfere with prospective law enforcement action, criminal investigation or prosecution. Additionally, despite the fact the indictment against Golubski is no longer pending, Defendants assert that KSA 45-221(a)(10)(A) and (B) continues to be applicable because related indictments are still pending prosecution.

#### K.S.A. 45-221(a)(10) - Criminal investigation records

Pursuant to K.S.A. 45-221(a)(10), "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:

- (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 the name, address, phone number or any other information that specifically and individually identifies the victim of any sexual offense described 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.

Per K.S.A. 45-217, "Criminal investigation records" means:

(1) Every audio or video recording made and retained by law enforcement using a body camera or vehicle camera as defined by K.S.A. 45-254, and amendments thereto; and (2) records of an investigatory agency or criminal justice agency as defined by K.S.A. 22-4701, and amendments thereto, compiled in the process of preventing, detecting or investigating violations of criminal law, but does not include police blotter entries, court records, rosters of inmates of jails or other correctional or detention facilities or records pertaining to violations of any traffic law other than vehicular homicide as defined by K.S.A. 21-3405, prior to its repeal, or K.S.A. 21-5406, and amendments thereto.

Even if an investigation concludes that no crime was committed, it still qualifies as in the process of preventing, detecting, or investigating violations of criminal law. For example, in *Seck*, the Police department's records concerning its investigation into death of former county commissioner, which resulted in conclusion of suicide, were "criminal investigation records" within meaning of exception to disclosure requirements of Kansas Open Records Act. The court held that the police department was a criminal justice agency, and police department's investigation, which may have uncovered names of innocent individuals who were suspects or informants, qualified as process of preventing, detecting or investigating violations of criminal law. *Seck v. City of Overland Park*, 2000, 27 P.3d 919, 29 Kan.App.2d 256

The Kansas Bureau of Investigation (KBI) and the Federal Bureau of Investigation (FBI) are both criminal justice agencies charged with preventing, detecting or investigating violations of criminal law. The Kansas City, Kansas Police Department is also clearly a criminal justice agency charged with preventing, detecting or investigating violations of criminal law. When Defendants provide records to either

the KBI or FBI, those records are compiled to detect or investigate crime, and therefore are criminal investigation records.

A "public interest" supporting disclosure of criminal investigation records under the Kansas Open Records Act (KORA) 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; mere curiosity about the circumstances surrounding an investigation is not sufficient. K.S.A. 45-221(a)(10). Seck v. City of Overland Park, 2000, 27 P.3d 919, 29 Kan.App.2d 256.

Plaintiffs included exhibits from various community members and referenced newspaper articles to support their "public interest". It's unclear to Defendants how disclosing such records to the public, which have been provided to investigative agencies with the goal of preventing, detecting or investigating crimes, would actually promote the Plaintiff's stated "public interest".

If the records Plaintiff requests are disclosed to the public the release would likely interfere with any prospective law enforcement action, criminal investigation or prosecution and may reveal the identity of any confidential source or undercover agent. Defendants have been providing records in response to FBI subpoenas related to the pending indictments listed in paragraph 30 (above) since 2019. Disclosing the records requested could reveal the scope and direction of that and any related investigation which would impede the investigation and any potential prosecution pending or brought in the future.

The legislative intent behind the criminal investigation records exception to the Kansas Open Records Act is to protect innocent persons whose names might be involved in an investigation, either as possible suspects or as informants. Seck v. City of Overland Park, 29 Kan. App. 2d 256 (2000). The closure authority also allows the criminal law enforcement agencies to protect the integrity of an-going case, protect informants, keep secret the methods of investigation not generally known by the public, and retain some ability to take future enforcement actions on a "cold-case." Id. So again, even records Defendants have provided in relation to older criminal investigations to the KBI or FBI, even if not currently ongoing, would still be considered criminal investigation records and should not be disclosed.

Here, Plaintiff's "public interest" is outweighed by the danger of disclosure. Defendants' safeguarding of such records promotes a public interest in the ability of an unobstructed investigation to confirm or deny allegations of police misconduct. It promotes the ability to hold those that may be charged with crimes related to misconduct accountable and promotes the ability of witnesses to cooperate without fear of retaliation or harassment from the public or media. If police accountability is the goal for Plaintiff's, then maintaining the integrity of an investigation by denying the disclosure of these records is the best way to promote that goal.

## III. Defendants assessed reasonable fees related to the search, review, and provision of responsive open records.

Plaintiffs claim that Defendants arbitrarily assessed an "excessive" fee of \$1,487.40 for the eventual production of 225 documents. (Petition, ¶ 160). Plaintiffs seem to argue that Defendants may only charge for the cost of copies of documents that are produced. (See Petition, ¶ 167). But this argument fails to consider the staff time including legal review it takes to (1) conduct a search for and gather potentially responsive records, (2) review all records and email communications to determine what, if any exceptions apply, (3) and redact when appropriate, prior to even being able to produce a record. The mere fact that the overall fee for the documents produced exceeds \$0.25 per page does not indicate that Defendants charged an unreasonable fee. In fact, Defendants are statutorily entitled to charge for the staff time needed to review all of the potentially relevant records, whether they are ultimately disclosed or not, and the time needed to make disclosure determinations.

KSA 45-218(f) states that "A public agency may charge and require advance payment of a fee for providing access to or furnishing copies of public records, subject to K.S.A. 45-219." K.S.A. 45-219(c) states, in relevant part: "each public agency may prescribe reasonable fees for providing access to or furnishing copies of public records, subject to the following:

(1) In the case of fees for copies of records, the fees shall not exceed the actual cost of furnishing copies, including the cost of staff time required to make the information available."

Defendants properly charged Plaintiffs for the cost of providing copies of the records it produced, and the staff time "required to make the information available." Contrary to Plaintiffs' apparent belief that the staff time needed to make public records available upon request is negligible (see Petition, ¶ 167), arguing that a reasonable fee would not exceed \$0.25 per page produced), Defendants actually need significant staff time to (1) conduct a search for and gather potentially responsive records, (2) review all records and email communications to determine what, if any exceptions apply, (3) and redact when appropriate, prior to even being able to produce a record.

The amount that Defendants charge for staff time on these requests is reasonable. The Office of the Attorney General, which is charged with enforcing KORA, has published guidance on the issue of "reasonable fees for staff time when reviewing enforcement actions/complaints [under KORA]" (Office of the Kansas Attorney General, Guidance Document – Kansas Open Records Act (KORA) Fees for Cost of Staff Time, last accessed Jan. 16, 2025, available at <a href="https://www.ag.ks.gov/home/showpublisheddocument/68/638454309127270000">https://www.ag.ks.gov/home/showpublisheddocument/68/638454309127270000</a>). This guidance indicates that public agencies may reasonably charge \$18 per hour of clerical time, \$35 per hour of general attorney time, \$50 per hour of supervisory attorney time, and \$38 per hour for Information Technology services. (Id.)

Defendants notify all requestors of the rate charged for requests, including that payment may be required in advance, and that if overpayment or underpayment occurs, adjustments will be made. Defendants charge at a rate of \$24.83 per hour for

administrative staff time and \$35.05 per hour for professional staff time, which is consistent with the guidance provided by the Attorney General. (Exhibit 7, UG KORA Open Records Request Form).

The Attorney General also recently addressed the issue of unreasonable fees in a 2000 enforcement action against the City of Frontenac, where it found that the City's request for a \$3,500 advance payment in response to a KORA request was unreasonable because it "provided virtually no explanation to show how it arrived at the requested fee or how it was equivalent to the actual costs necessary to provide the individual with the records he requested" and was eventually revised down to \$520. (Office of the Kansas Attorney General, 2020 Kansas Open Meetings Act Kansas Open Records Act AnnualReport, 30-31, last accessed Jan. 2025, available pp. 16, at https://www.ag.ks.gov/home/showpublisheddocument/10796/638461045353570000). In this case, on the other hand, Defendants determined the anticipated cost based on actual time spent in a previous similar request, taking into consideration the large increase in scope because of a substantially greater responsive time period, as well as (Defendants MTD, ¶ 3). Additionally, while additional requests for production. Defendants did revise down its estimated fee and reimburse Plaintiffs, that revision occurred not because of a media outcry like in the Frontenac case, but because Plaintiffs failed to decide whether to narrow their Request #6 given the voluminous results it engendered, or pay an additional amount for the extra time needed to determine which records among those identified as relevant were subject to disclosure.

Contrary to Plaintiffs' assertion that Defendants acted unreasonably in charging more than \$0.25 per page for the records they produced, Defendants actually charged a reasonable fee for the identification of records responsive to Plaintiffs' requests, the determination of which of those records were subject to disclosure, and the actual production of those records.

### IV. Good Faith

Plaintiff requests costs and attorney's fees as provided by K.S.A. 45-222(d). That would require the Court first rule that no exception applies, and further find that Defendants' denial was not in good faith and without reasonable basis in fact or law. Defendants contend that their foregoing arguments establish that the reasons for denial were made in good faith and made based on a reasonable basis in both fact and law.

### Conclusion

WHEREFORE, Defendants request this Court grant this motion to dismiss and deny Plaintiffs' requests for declaratory judgment, based on the foregoing arguments. Defendants further request the Court deny Plaintiff's request for costs and attorney's fees as Defendants' denials were made in good faith and with a reasonable basis in fact and law.

Respectfully submitted,

/s/ Casey Meyer
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Sheri Courtney #18220
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Attorneys for Defendants

### **Certificate of Service**

I certify that on January 16, 2025, the foregoing was filed using the was filed through the Court's electronic filing system which will send a notice of electronic filing to all parties currently entered.

s/ Casey Meyer
Casey Meyer

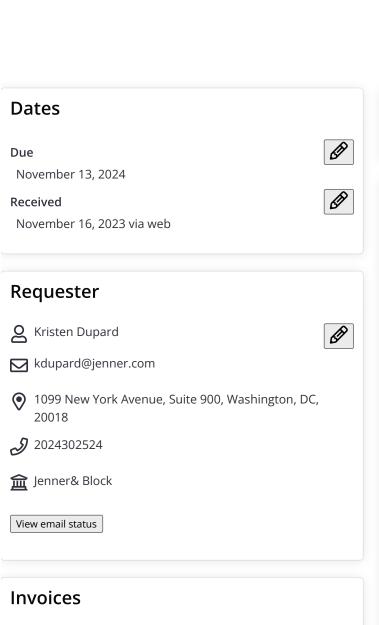
Skip to main content EXHIBIT 1

Unified Government of WYCO/KCK

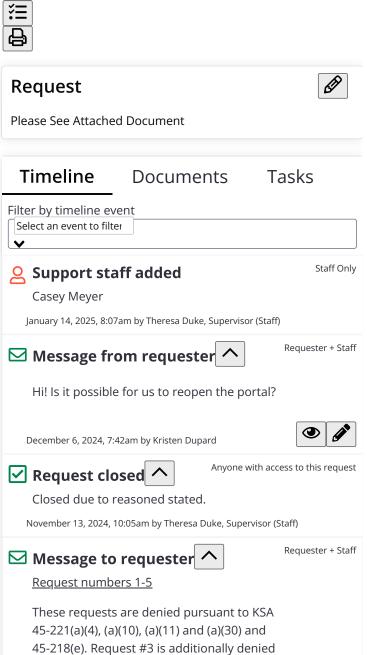
Request 23-3400

► NextRequest





Paid - \$2,202.48 on 01/09/24



### Staff assigned

#### **Departments**

Legal

#### Point of contact

Angie Lawson

#### Support staff

Casey Meyer

Daiana Balliett

**James Eickhoff** 

Joni Cole

Theresa Duke

Wendy Green

### **Tags**

#### Assigned tags

No tags assigned















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pursuant to KSA 45-219(a). Identifying and providing a detailed description of any complaint would disclose personnel records or individually identifiable records pertaining to employees and constitute a clearly unwarranted invasion of personal privacy. KSA 45-221(a)(4) provides that a public agency is not required to disclose "Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries or actual compensation employment contracts or employment-related contracts or agreements and lengths of service of officers and employees of public agencies once they are employed as such." Further, identifying whether a particular employee has been the subject of a complaint would disclose personnel records not required to be provided under (a)(4) and constitute an unwarranted invasion of personal privacy under (a)(30).

#### Request number 6

The original search was conducted for KCKPD emails. We requested the search be re-run with the additional terms. The process caused technical issues that impacted the department's email system. Running further searches and/or reviewing the over 23,000 results of the original search places an unreasonable burden on the department. Thus, this request is denied pursuant to KSA 45-218(e).

November 12, 2024, 4:49pm by Theresa Duke, Supervisor (Staff)





### **☑** Message from requester **△**

Requester + Staff

This follows up on our previous correspondence regarding the Unified Government's overdue response to our KORA request. Particularly as to Request No. 6, the Unified Government agreed on October 28, 2024 to re-run its email searches based on modified search terms and to provide a response by November 13, 2024. In furtherance of our efforts to resolve our dispute as to Request No. 6, we ask that you advise by close of business tomorrow (November 7, 2024 - one week in advance of

the Unified Government's self-declared response deadline):

- 1. Whether the Unified Government has run the modified searches,
- 2. If so, the result of the modified searches (including document "hit" count),
- 3. Whether the Unified Government will be prepared to produce the resulting documents by Nov. 13, 2024; and
- 4. If not, why not.

Please also advise as to whether the Unified Government intends to amend its position on any of the other pending requests and/or to make any supplemental production as to those requests.

November 6, 2024, 12:31pm by Kristen Dupard



### 



Requester + Staff

On October 23, 2024, we sent a pre-suit letter to the Unified Government regarding its continuing failure to comply with its disclosure obligations under KORA, particularly with respect to Request Nos. 1-6 of the KORA request that we submitted on November 16, 2023. On October 28, 2024, the Unified Government responded via the portal, but only with respect to Request No. 6. Specifically, the Unified Government stated that (1) it would re-run its email search for Request No. 6 using our proposed additional terms ("and complaint or investigation or violation") and (2) it would "re-open and extend this request to November 13, 2024, to allow time to review and respond."

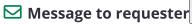
We will accept the November 13, 2024, response date that the Unified Government has set for itself, but we cannot accept further delays. Accordingly, we expect that, by November 13, 2024, the Unified Government will have run the modified searches on the approximately 23K emails previously identified as potentially

responsive and be prepared to immediately produce the resulting subset of documents. Unless we receive an adequate response on November 13, 2024 (notably, as to Request Nos. 1-6, not only Request No. 6), we will have no practical choice but to file the complaint that we were prepared to file today (October 31, 2024).

We look forward to your response by November 13, 2024, and, in the interim, we are available to discuss.

October 31, 2024, 5:19pm by Kristen Dupard







We have added letter dated 10/23/2024 from requestor.

October 28, 2024, 4:09pm by Theresa Duke, Supervisor (Staff)



# Document(s) released to requester

Requester + Staff

2024.10.23 JB Ltr to Unified Government.pdf

October 28, 2024, 4:09pm by Theresa Duke, Supervisor (Staff)

## 

Requester + Staff

We have received your letter dated October 23, 2024. Please note that on March 12, 2024, we notified you that the initial search for request #6 yielded over 23,000 emails and asked if you would like to narrow this request. This request was extended several times, in one to two week increments, awaiting your response on this issue. On June 26, 2024, we notified you that we were extending the request until July 17, 2024, as we were still awaiting your response about narrowing request #6 and if no response was received by then we would close the request. When no response was received, the request was closed on July 17, 2024.

We will have the email search re-run with your additional terms: "and complaint or investigation or violation."

We will re-open and extend this request to November 13, 2024, to allow time to review

and respond.

October 28, 2024, 4:07pm by Theresa Duke, Supervisor (Staff)



### m Due date changed

Staff Only

11/13/2024 (was 07/17/2024). to allow time to review and respond

October 28, 2024, 4:04pm by Theresa Duke, Supervisor (Staff)

### Document(s) added

Staff Only

2024.10.23 JB Ltr to Unified Government.pdf

October 28, 2024, 4:04pm by Theresa Duke, Supervisor (Staff)

### Request reopened

Anyone with access to this request

October 28, 2024, 4:03pm by Theresa Duke, Supervisor (Staff)

### 



Requester + Staff

Hi! Is it possible for us to reopen the portal?

October 23, 2024, 3:48pm by Kristen Dupard



# Document(s) released to requester

Requester + Staff

Offense Report 2015052652 1\_Redacted.pdf
Offense\_Redacted.pdf

July 19, 2024, 9:18am by Daiana Balliett, Administrative Support Specialist (Staff)

### Document(s) added

Staff Only

Offense Report 2015052652 1\_Redacted.pdf

Offense\_Redacted.pdf

July 19, 2024, 9:18am by Daiana Balliett, Administrative Support Specialist (Staff)

### ✓ Request closed ^

Anyone with access to this request

With our delivery of the requested data, your Kansas Open Records Request is being closed. Please let us know if we can be of further assistance.

Thank you.

July 17, 2024, 5:00pm by Daiana Balliett, Administrative Support Specialist (Staff)

# Document(s) released to requester

Requester + Staff

Autopsy Report.pdf Final Autopsy Report.PDF

July 17, 2024, 4:59pm by Daiana Balliett, Administrative Support Specialist (Staff)

## 

Requester + Staff

We have identified and released additional responsive records related to request #15. We have not received a response from you concerning narrowing request #6. As such, we have asked our accounting department to issue a refund in the amount of \$715.08, the unused portion of your payment and we will close this request.

July 17, 2024, 4:59pm by Daiana Balliett, Administrative Support Specialist (Staff)



### Document(s) added

Staff Only

Autopsy Report.pdf

Final Autopsy Report.PDF

July 17, 2024, 4:59pm by Daiana Balliett, Administrative Support Specialist (Staff)

### 🛗 Due date changed

Staff Only

07/17/2024 (was 06/26/2024). Awaiting requester's response.

June 26, 2024, 3:02pm by Daiana Balliett, Administrative Support Specialist (Staff)

## 

Requester + Staff

This request is being extended to July 17, 2024 as we are awaiting your response about narrowing request #6. If we do not receive a response by then, we intend to refund any unused portion of your payment and close this request.

June 26, 2024, 3:01pm by Daiana Balliett, Administrative Support Specialist (Staff)



### Document(s) released to

Requester + Staff



5460.JPG

21191.JPG

31196.JPG

23617.JPG

108340.JPG

164772.JPG

172520.JPG

223668.JPG 229318.JPG

-23310.ji C

246386.JPG

230735.JPG

Brian Rogers.pdf

Donald Blain.pdf

Elijah McPike.pdf
Eric Clay.pdf
John Hiltner.pdf
Jason Foley.pdf
John Pennington.pdf
Kennardrick Tims.pdf
Joseph Herrington.pdf

June 20, 2024, 4:23pm by James Eickhoff (Staff)

# Document(s) released to requester

Requester + Staff

DEATHS IN CUSTODY.pdf Yolandra Brockman.pdf

June 20, 2024, 4:22pm by James Eickhoff (Staff)

# Document(s) added ^

Staff Only

5460.JPG

21191.JPG

31196.JPG

23617.JPG

108340.JPG

164772.JPG

172520.JPG

223668.JPG

229318.JPG

246386.JPG

230735.JPG

Brian Rogers.pdf

Donald Blain.pdf

Elijah McPike.pdf

Eric Clay.pdf

John Hiltner.pdf

Jason Foley.pdf

John Pennington.pdf

Kennardrick Tims.pdf

Joseph Herrington.pdf

DEATHS IN CUSTODY.pdf

Yolandra Brockman.pdf

June 20, 2024, 4:21pm by James Eickhoff (Staff)

### m Due date changed

Staff Only

06/26/2024 (was 06/13/2024). Additional time needed to gather records and review for redactions. Still waiting on requester to narrow request #6.

June 13, 2024, 9:03am by Daiana Balliett, Administrative Support Specialist (Staff)

### m Due date changed

Staff Only

06/13/2024 (was 05/31/2024). Additional time needed to gather records and review for redactions. Still waiting on requester to narrow request #6.

May 31, 2024, 10:34am by Daiana Balliett, Administrative Support Specialist (Staff)

### 🛗 Due date changed

Staff Only

05/31/2024 (was 05/20/2024). Additional time needed to gather records and review for redactions.

May 20, 2024, 11:18am by Daiana Balliett, Administrative Support Specialist (Staff)

### Document(s) added

Staff Only

Letter from requestor re item no. 15.pdf

May 9, 2024, 4:27pm by Theresa Duke, Supervisor (Staff)

### X Document(s) deleted

Staff Only

SKM C550i24050912370.pdf

May 9, 2024, 4:27pm by Theresa Duke, Supervisor (Staff)

### Document(s) added

Staff Only

SKM\_C550i24050912370.pdf

May 9, 2024, 4:25pm by Theresa Duke, Supervisor (Staff)

### Support staff removed

Staff Only

Shanda Mitchell

May 9, 2024, 4:24pm by Theresa Duke, Supervisor (Staff)

### Support staff removed

Staff Only

Jeff Conway

May 9, 2024, 4:24pm by Theresa Duke, Supervisor (Staff)

### Support staff removed

Staff Only

Daniel Kuhn

May 9, 2024, 4:24pm by Theresa Duke, Supervisor (Staff)



Staff Only

Please see #15 of original request.

May 9, 2024, 4:24pm by Theresa Duke, Supervisor (Staff)



### Support staff added

Staff Only

Joni Cole James Eickhoff

May 9, 2024, 4:24pm by Theresa Duke, Supervisor (Staff)

### 🛗 Due date changed

Staff Only

05/20/2024 (was 05/06/2024). Awaiting response from requester regarding the narrowing down of email search in request #6.

May 6, 2024, 9:37am by Daiana Balliett, Administrative Support Specialist (Staff)

### **☑** Message to requester

Requester + Staff

This request is being extended because we are awaiting your response concerning narrowing request #6. Thank you.

May 6, 2024, 9:37am by Daiana Balliett, Administrative Support Specialist (Staff)



### m Due date changed

Staff Only

05/06/2024 (was 04/22/2024). Awaiting response from requester regarding the narrowing down of email search in request #6.

April 22, 2024, 1:42pm by Daiana Balliett, Administrative Support Specialist (Staff)

### 

Staff Only

04/22/2024 (was 04/15/2024). Awaiting response from requester.

April 15, 2024, 5:03pm by Daiana Balliett, Administrative Support Specialist (Staff)

# Document(s) released to requester

Requester + Staff

Request #23-3400\_Response 20240415.pdf

April 15, 2024, 5:03pm by Daiana Balliett, Administrative Support Specialist

### Document(s) added

Staff Only

Request #23-3400\_Response 20240415.pdf

April 15, 2024, 5:03pm by Daiana Balliett, Administrative Support Specialist (Staff)

### 🛗 Due date changed

Staff Only

04/15/2024 (was 04/03/2024). Awaiting response from requester.

April 3, 2024, 4:26pm by Daiana Balliett, Administrative Support Specialist (Staff)

Requester + Staff

This request is being extended to provide a response to your letter dated April 1 and for your response about narrowing request #6. The search terms used for request #6 were:

2006 and MOU or Memorandum of Understanding and DOJ or Department of Justice and/or FBI or Federal Bureau of Investigation

Please let us know if you would like to narrow this request.

April 3, 2024, 4:26pm by Daiana Balliett, Administrative Support Specialist (Staff)





Requester + Staff

Please see the attached letter response to the Unified Government. Thank you for your attention to this matter.

April 1, 2024, 4:04pm by Kristen Dupard





Staff Only

2024.04.01 - Response to Unified Government.pdf

April 1, 2024, 4:01pm by Kristen Dupard

### **iii** Due date changed

Staff Only

04/03/2024 (was 03/20/2024). Waiting on response from requester to see if they would like to narrow request #6.

March 20, 2024, 8:28am by Daiana Balliett, Administrative Support Specialist (Staff)



Requester + Staff

We are still waiting on your response to the message sent on 3/12/24:

Concerning request #6, the email search with key words from your initial request yielded over 23,000 emails. A cursory review of some of the messages found none that were responsive to your request. Review of all these messages may increase the cost to process this request, as it will take an extended period of time and there may be no responsive records. Would you like to narrow your request?

March 20, 2024, 8:28am by Daiana Balliett, Administrative Support Specialist (Staff)



### Message to requester ↑



We have uploaded and released additional records for Request #16. They are available for download in the Documents tab. Thank you.

March 15, 2024, 10:10am by Daiana Balliett, Administrative Support Specialist (Staff)



### Document(s) released to

### Requester + Staff



Request #16 - Personnel Locator 05292020.pdf

Request #16 - Personnel Locator

06282019.pdf

Request #16 - Personnel Locator

07122019.pdf

Request #16 - Personnel Locator

08032019.pdf

Request #16 - Personnel Locator

07262019.pdf

Request #16 - Personnel Locator

08162019.pdf

Request #16 - Personnel Locator

09052019.pdf

Request #16 - Personnel Locator

09122019.pdf

Request #16 - Personnel Locator

09202018.pdf

Request #16 - Personnel Locator

09132018.pdf

Request #16 - Personnel Locator

09282018.pdf

Request #16 - Personnel Locator

10042019.pdf

Request #16 - Personnel Locator

10122018.pdf

Request #16 - Personnel Locator

10182019.pdf

Request #16 - Personnel Locator

10262018.pdf

Request #16 - Personnel Locator

11022018.pdf

Request #16 - Personnel Locator

12062018.pdf

Request #16 - Personnel Locator

12242019.pdf

Request #16 - Personnel Locator as of

010920.pdf

Request #16 - PL 060820.pdf

Request #16 - PL 071320.pdf

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Request #16 - PL 071420.pdf
Request #16 - PL 071520.pdf
Request #16 - PL 091520.pdf
Request #16 - 09-23-21.pdf
Request #16 - 09-30-21.pdf
Request #16 - 10-01-21.pdf
Request #16 - 10-07-21.pdf
Request #16 - 10-07-22.pdf
Request #16 - 10-11-21.pdf
Request #16 - 10-13-22.pdf
Request #16 - 10-16-23.pdf
Request #16 - 10-19-21.pdf
Request #16 - 10-19-22.pdf
Request #16 - 10-20-23.pdf
Request #16 - 10-21-20.pdf
Request #16 - 10-27-22.pdf
Request #16 - 10-21-21.pdf
Request #16 - 10-28-21.pdf
Request #16 - 10-29-21.pdf
Request #16 - 10-31-22.pdf
Request #16 - 11-2-22.pdf
Request #16 - 11-1-22.pdf
Request #16 - 11-04-22.pdf
Request #16 - 11-15-21.pdf
Request #16 - 11-10-22.pdf
Request #16 - 11-19-20.pdf
Request #16 - 11-18-21.pdf
Request #16 - 11-26-20.pdf
Request #16 - 12-02-22.pdf
Request #16 - 12-03-20.pdf
Request #16 - 12-09-21.pdf
Request #16 - 12-16-21.pdf
Request #16 - 12-16-22.pdf
Request #16 - 12-17-20.pdf
Request #16 - 05272020.pdf
Request #16 - Personnel 08-06-20.pdf
Request #16 - Personnel Locator 01 04 2018
(002).pdf
Request #16 - personnel locator
01_07_2013.pdf
Request #16 - Personnel Locator 01-06-
21.pdf
Request #16 - Personnel Locator 04-02-
20.pdf
Request #16 - Personnel Locator 06-11-
20.pdf
Request #16 - Personnel Locator 05-12-
20.pdf
Request #16 - Personnel Locator 06-23-
20.pdf
Request #16 - Personnel Locator 07-22-
20.pdf
Request #16 - Personnel Locator 08-13-
20.pdf
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Request #16 - Personnel Locator 09-03-

20.pdf

Request #16 - Personnel Locator 09-22-

20.pdf

Request #16 - Personnel Locator 10-01-

20.pdf

Request #16 - Personnel Locator 2420.pdf

Request #16 - Personnel Locator 042320.pdf

Request #16 - Personnel Locator

01032019.pdf

Request #16 - Personnel Locator 060519.pdf

Request #16 - Personnel Locator

01252019.pdf

Request #16 - Personnel Locator

02082019.pdf

Request #16 - Personnel Locator

2132020.pdf

Request #16 - Personnel Locator

03122020.pdf

Request #16 - Personnel Locator

03142019.pdf

Request #16 - Personnel Locator

03312020.pdf

Request #16 - Personnel Locator

04042019.pdf

Request #16 - Personnel Locator

05032019.pdf

Request #16 - Personnel Locator

05142020.pdf

March 15, 2024, 10:02am by Daiana Balliett, Administrative Support Specialist (Staff)



Staff Only

Request #16 - Personnel Locator 05292020.pdf

Request #16 - Personnel Locator 06282019.pdf

Request #16 - Personnel Locator 07122019.pdf

Request #16 - Personnel Locator 08032019.pdf

Request #16 - Personnel Locator 07262019.pdf

Request #16 - Personnel Locator 08162019.pdf

Request #16 - Personnel Locator 09052019.pdf

Request #16 - Personnel Locator 09122019.pdf
Request #16 - Personnel Locator 09202018.pdf

Request #16 - Personnel Locator 09132018.pdf

Request #16 - Personnel Locator 09282018.pdf

Request #16 - Personnel Locator 10042019.pdf

Request #16 - Personnel Locator 10122018.pdf

Request #16 - Personnel Locator 10182019.pdf

Request #16 - Personnel Locator 10262018.pdf

Request #16 - Personnel Locator 11022018.pdf

Request #16 - Personnel Locator 12062018.pdf

Request #16 - Personnel Locator 12242019.pdf

Request #16 - Personnel Locator as of 010920.pdf

Request #16 - PL 060820.pdf

Request #16 - PL 071320.pdf

Request #16 - PL 071420.pdf

Request #16 - PL 071520.pdf

Request #16 - PL 091520.pdf

Request #16 - 09-23-21.pdf

Request #16 - 09-30-21.pdf

Request #16 - 10-01-21.pdf

Request #16 - 10-07-21.pdf

Request #16 - 10-07-22.pdf

Request #16 - 10-11-21.pdf

Request #16 - 10-13-22.pdf

Request #16 - 10-16-23.pdf

Request #16 - 10-19-21.pdf

Request #16 - 10-19-22.pdf

Request #16 - 10-20-23.pdf

Request #16 - 10-21-20.pdf

Request #16 - 10-27-22.pdf

Request #16 - 10-21-21.pdf

Request #16 - 10-28-21.pdf

Request #16 - 10-29-21.pdf

Request #16 - 10-31-22.pdf

Request #16 - 11-2-22.pdf

Request #16 - 11-1-22.pdf

Request #16 - 11-04-22.pdf

Request #16 - 11-15-21.pdf

Request #16 - 11-10-22.pdf

Request #16 - 11-19-20.pdf

Request #16 - 11-18-21.pdf

Request #16 - 11-26-20.pdf

Request #16 - 12-02-22.pdf

Request #16 - 12-03-20.pdf

Request #16 - 12-09-21.pdf

Request #16 - 12-16-21.pdf

Request #16 - 12-16-22.pdf

Request #16 - 12-17-20.pdf

Request #16 - 05272020.pdf

Request #16 - Personnel 08-06-20.pdf

Request #16 - Personnel Locator 01 04 2018 (002).pdf

Request #16 - personnel locator 01\_07\_2013.pdf

Request #16 - Personnel Locator 01-06-21.pdf

Request #16 - Personnel Locator 04-02-20.pdf

Request #16 - Personnel Locator 06-11-20.pdf

Request #16 - Personnel Locator 05-12-20.pdf

Request #16 - Personnel Locator 06-23-20.pdf

Request #16 - Personnel Locator 07-22-20.pdf

Request #16 - Personnel Locator 08-13-20.pdf

Request #16 - Personnel Locator 09-03-20.pdf

Request #16 - Personnel Locator 09-22-20.pdf

Request #16 - Personnel Locator 10-01-20.pdf

Request #16 - Personnel Locator 2420.pdf

Request #16 - Personnel Locator 042320.pdf

Request #16 - Personnel Locator 01032019.pdf

Request #16 - Personnel Locator 060519.pdf

Request #16 - Personnel Locator 01252019.pdf

Request #16 - Personnel Locator 02082019.pdf

Request #16 - Personnel Locator 2132020.pdf

Request #16 - Personnel Locator 03122020.pdf

Request #16 - Personnel Locator 03142019.pdf

Request #16 - Personnel Locator 03312020.pdf

Request #16 - Personnel Locator 04042019.pdf

Request #16 - Personnel Locator 05032019.pdf

Request #16 - Personnel Locator 05142020.pdf

March 15, 2024, 10:02am by Daiana Balliett, Administrative Support Specialist (Staff)

### Document(s) released to

Requester + Staff

### requester ^

Request #16 - 09-16-21.pdf

Request #16 - 09-20-22.pdf

Request #16 - 09-22-22.pdf

Request #16 - 01-06-22.pdf

Request #16 - 01-12-23.pdf

Request #16 - 01-14-21.pdf

Request #16 - 01-20-23.pdf

Request #16 - 01-21-21.pdf

Request #16 - 01-25-23.pdf

Request #16 - 01-28-21.pdf

Request #16 - 02-02-23.pdf

Request #16 - 02-01-22.pdf

Request #16 - 02-03-22.pdf

Request #16 - 02-09-22.pdf

Request #16 - 02-10-22.pdf

Request #16 - 02-10-23.pdf

Request #16 - 02-16-22.pdf Request #16 - 02-17-22.pdf

Request #16 - 02-17-23.pdf

Request #16 - 02-24-22.pdf

Request #16 - 02-18-21.pdf

Request #16 - 02-25-22.pdf

Request #16 - 02-26-21.pdf

Request #16 - 02-28-23.pdf

Request #16 - 03-01-22.pdf

Request #16 - 03-04-22.pdf

Request #16 - 03-06-23.pdf

Request #16 - 03-07-22.pdf

Request #16 - 03-09-23.pdf

Request #16 - 03-10-23.pdf

Request #16 - 03-15-23.pdf

Request #16 - 03-16-23.pdf

Request #16 - 03-17-22.pdf

Request #16 - 03-18-21.pdf

Request #16 - 03-18-22.pdf

Request #16 - 03-23-23.pdf

Request #16 - 03-22-23.pdf

Request #16 - 03-24-22.pdf

Request #16 - 03-30-23.pdf

Request #16 - 03-31-22.pdf

Request #16 - 04-01-22.pdf

Request #16 - 03-31-23.pdf Request #16 - 04-04-23.pdf Request #16 - 04-06-23.pdf Request #16 - 04-12-22.pdf Request #16 - 04-13-23.pdf Request #16 - 04-14-21.pdf Request #16 - 04-14-22.pdf Request #16 - 04-27-22.pdf Request #16 - 05-04-22.pdf Request #16 - 05-06-22.pdf Request #16 - 05-04-23.pdf Request #16 - 05-10-23.pdf Request #16 - 05-11-23.pdf Request #16 - 05-13-22.pdf Request #16 - 05-12-21.pdf Request #16 - 05-18-22.pdf Request #16 - 05-21-21.pdf Request #16 - 05-25-23.pdf Request #16 - 05-26-23.pdf Request #16 - 06-06-23.pdf Request #16 - 06-01-22.pdf Request #16 - 06-07-22.pdf Request #16 - 06-09-21.pdf Request #16 - 06-15-23.pdf Request #16 - 06-16-22.pdf Request #16 - 06-17-21.pdf Request #16 - 06-23-21.pdf Request #16 - 06-28-22.pdf Request #16 - 06-30-23.pdf Request #16 - 07-01-22.pdf Request #16 - 07-06-22.pdf Request #16 - 07-07-22.pdf Request #16 - 07-08-22.pdf Request #16 - 07-09-21.pdf Request #16 - 07-12-22.pdf Request #16 - 07-15-21.pdf Request #16 - 07-17-23.pdf Request #16 - 07-18-22.pdf Request #16 - 07-21-23.pdf Request #16 - 07-22-21.pdf Request #16 - 07-29-22.pdf Request #16 - 07-30-21.pdf Request #16 - 07-30-21\_.pdf Request #16 - 08-02-23.pdf Request #16 - 08-10-23.pdf Request #16 - 08-04-22.pdf Request #16 - 08-11-22.pdf Request #16 - 08-12-21.pdf Request #16 - 08-14-23.pdf Request #16 - 08-18-21.pdf Request #16 - 08-18-22.pdf Request #16 - 08-26-21.pdf Request #16 - 08-19-21.pdf Request #16 - 08-26-22.pdf

Request #16 - 8-10-21.pdf

Request #16 - 09-02-21.pdf

Request #16 - 09-08-23.pdf

Request #16 - 09-03-21.pdf

Request #16 - 09-10-21.pdf

March 15, 2024, 10:01am by Daiana Balliett, Administrative Support Specialist

### Document(s) added ^



Staff Only

Request #16 - 09-16-21.pdf

Request #16 - 09-20-22.pdf

Request #16 - 09-22-22.pdf

Request #16 - 01-06-22.pdf

Request #16 - 01-12-23.pdf

Request #16 - 01-14-21.pdf

Request #16 - 01-20-23.pdf

Request #16 - 01-21-21.pdf

Request #16 - 01-25-23.pdf

Request #16 - 01-28-21.pdf

Request #16 - 02-02-23.pdf

Request #16 - 02-01-22.pdf

Request #16 - 02-03-22.pdf

Request #16 - 02-09-22.pdf

Request #16 - 02-10-22.pdf

Request #16 - 02-10-23.pdf

Request #16 - 02-16-22.pdf

Request #16 - 02-17-22.pdf

Request #16 - 02-17-23.pdf

Request #16 - 02-24-22.pdf

Request #16 - 02-18-21.pdf

Request #16 - 02-25-22.pdf

Request #16 - 02-26-21.pdf

Request #16 - 02-28-23.pdf

Request #16 - 03-01-22.pdf

Request #16 - 03-04-22.pdf

Request #16 - 03-06-23.pdf

Request #16 - 03-07-22.pdf	
Request #16 - 03-09-23.pdf	
Request #16 - 03-10-23.pdf	
Request #16 - 03-15-23.pdf	
Request #16 - 03-16-23.pdf	
Request #16 - 03-17-22.pdf	
Request #16 - 03-18-21.pdf	
Request #16 - 03-18-22.pdf	
Request #16 - 03-23-23.pdf	
Request #16 - 03-22-23.pdf	
Request #16 - 03-24-22.pdf	
Request #16 - 03-30-23.pdf	
Request #16 - 03-31-22.pdf	
Request #16 - 04-01-22.pdf	
Request #16 - 03-31-23.pdf	
Request #16 - 04-04-23.pdf	
Request #16 - 04-06-23.pdf	
Request #16 - 04-12-22.pdf	
Request #16 - 04-13-23.pdf	
Request #16 - 04-14-21.pdf	
Request #16 - 04-14-22.pdf	
Request #16 - 04-27-22.pdf	
Request #16 - 05-04-22.pdf	
Request #16 - 05-06-22.pdf	
Request #16 - 05-04-23.pdf	
Request #16 - 05-10-23.pdf	
Request #16 - 05-11-23.pdf	
Request #16 - 05-13-22.pdf	
Request #16 - 05-12-21.pdf	
Request #16 - 05-18-22.pdf	
Request #16 - 05-21-21.pdf	
Request #16 - 05-25-23.pdf	

Request #16 - 05-26-23.pdf

#### Request #16 - 07-17-23.pdf

#### Request #16 - 07-18-22.pdf

#### Request #16 - 07-21-23.pdf

Request #16 - 08-19-21.pdf

Request #16 - 08-26-22.pdf

Request #16 - 8-10-21.pdf

Request #16 - 09-02-21.pdf

Request #16 - 09-08-23.pdf

Request #16 - 09-03-21.pdf

Request #16 - 09-10-21.pdf

March 15, 2024, 10:01am by Daiana Balliett, Administrative Support Specialist (Staff)

### 🛗 Due date changed

Staff Only

03/20/2024 (was 03/12/2024). Waiting on response from requester to see if they would like to narrow request #6.

March 12, 2024, 8:49am by Daiana Balliett, Administrative Support Specialist

### 

Requester + Staff

Concerning request #6, the email search with key words from your initial request yielded over 23,000 emails. A cursory review of some of the messages found none that were responsive to your request. Review of all these messages may increase the cost to process this request, as it will take an extended period of time and there may be no responsive records. Would you like to narrow your request?

March 12, 2024, 8:45am by Daiana Balliett, Administrative Support Specialist (Staff)





### Document(s) released to requester

Requester + Staff

Request #16 - 1971 KCKPD Org. Chart.pdf

March 7, 2024, 11:48am by Daiana Balliett, Administrative Support Specialist (Staff)

### 



Requester + Staff

We have uploaded an additional record for Request #16. It is available for download in the Documents tab. Thank you.

March 7, 2024, 11:48am by Daiana Balliett, Administrative Support Specialist (Staff)





### Document(s) added

Staff Only

Request #16 - 1971 KCKPD Org. Chart.pdf

March 7, 2024, 11:47am by Daiana Balliett, Administrative Support Specialist (Staff)

### 🛗 Due date changed

Staff Only

03/12/2024 (was 02/27/2024). Request No. 6 is still pending review. Additional time needed.

February 27, 2024, 2:30pm by Daiana Balliett, Administrative Support Specialist (Staff)

### Document(s) released to requester

Requester + Staff

Request #16 - Personnel Locator 01-06-

21.pdf

Reguest #16 - Personnel Locator 01-06-

22.pdf

Reguest #16 - Personnel Locator 01-12-

23.pdf

Request #16 - Personnel Locator 01 04

2018.pdf

Request #16 - Personnel Locator 010920.pdf

Request #16 - Personnel Locator 01-25-

19.pdf

February 27, 2024, 2:29pm by Daiana Balliett, Administrative Support Specialist (Staff)

### **☑** Message to requester ^



Requester + Staff

We have uploaded additional records for Request #16, which are available for download in the Documents tab.

Additional time is needed as we continue working on Request #6.

Thank you for your patience.

February 27, 2024, 2:29pm by Daiana Balliett, Administrative Support Specialist (Staff)





### 🖹 Document(s) added 🔨



Staff Only

Request #16 - Personnel Locator 01-06-21.pdf

Request #16 - Personnel Locator 01-06-22.pdf

Request #16 - Personnel Locator 01-12-23.pdf

Request #16 - Personnel Locator 01 04 2018.pdf

Request #16 - Personnel Locator 010920.pdf

Request #16 - Personnel Locator 01-25-19.pdf

February 27, 2024, 2:29pm by Daiana Balliett, Administrative Support Specialist (Staff)

### m Due date changed

Staff Only

02/27/2024 (was 02/20/2024). Request No. 6 is still pending review. Additional time needed.

February 20, 2024, 8:41am by Daiana Balliett, Administrative Support Specialist (Staff)

## 

Requester + Staff

Please note that Additional time is needed as Request No. 6 is still pending review. Thank you for your patience.

February 20, 2024, 8:41am by Daiana Balliett, Administrative Support Specialist (Staff)



### 🛗 Due date changed

Staff Only

02/20/2024 (was 02/06/2024). Request No. 6 is still pending review. Additional time needed.

February 6, 2024, 9:25am by Daiana Balliett, Administrative Support Specialist

### **☑** Message to requester

Requester + Staff

Request No. 6 is still pending review. Additional time needed.

Thank you for your patience.

February 6, 2024, 9:25am by Daiana Balliett, Administrative Support Specialist (Staff)



# Document(s) released to

Requester + Staff



Request #12 - Victim Services 2015.pdf

Request #10 - OICI 2017.pdf

Request #10 & 12 - IA SOP 2013.pdf

Request #10 & 12 - IA SOP 2018.pdf

Request #10 & 12 - SOP 2009.pdf

Request #10 & 12 - SOP 2008.pdf

Request #10 & 12 - SOP 2015.pdf

Request #10 & 12 - SOP 2019.pdf

Request #10 & 12 - SOP 2021.pdf

Request #10 & 12 - U-Visa 2017.pdf

Request #10 & 12 - SOP 2022.pdf

Request #10 - Crime Scene Responsibilities

2014.pdf

Request #10 - Crime Scene Responsibilities

2016.pdf

Request #10 - Crime Scene Responsibilities

2018.pdf

Request #10 - Crime Scene Responsibilities

2019.pdf

Request #10 - Detention and Arrest 01-

2016.pdf

Request #10 - Detention and Arrest 2015.pdf

Request #10 - Crime Scene Responsibilities

2020.pdf

Request #10 - Detention and Arrest 2016.pdf

Request #10 - Detention and Arrest 2022.pdf

Request #10 - OICI 2014.pdf

## Message to requester ↑

Requester + Staff

Request No. 6 is still pending review. All other documents to be provided have been uploaded.

Thank you.

January 22, 2024, 2:09pm by Wendy Green, Attorney (Staff)



### Document(s) added ^



Staff Only

Request #12 - Victim Services 2015.pdf

Request #10 - OICI 2017.pdf

Request #10 & 12 - IA SOP 2013.pdf

Request #10 & 12 - IA SOP 2018.pdf

Request #10 & 12 - SOP 2009.pdf

Request #10 & 12 - SOP 2008.pdf

Request #10 & 12 - SOP 2015.pdf

Request #10 & 12 - SOP 2019.pdf

Request #10 & 12 - SOP 2021.pdf

Request #10 & 12 - U-Visa 2017.pdf

Request #10 & 12 - SOP 2022.pdf

Request #10 - Crime Scene Responsibilities 2014.pdf

Request #10 - Crime Scene Responsibilities 2016.pdf

Request #10 - Crime Scene Responsibilities 2018.pdf

Request #10 - Crime Scene Responsibilities 2019.pdf

Request #10 - Detention and Arrest 01-2016.pdf

Request #10 - Detention and Arrest 2015.pdf

Request #10 - Crime Scene Responsibilities 2020.pdf

Request #10 - Detention and Arrest 2016.pdf

Request #10 - Detention and Arrest 2022.pdf

Request #10 - OICI 2014.pdf

January 22, 2024, 2:09pm by Wendy Green, Attorney (Staff)

# Document(s) released to



Request #23-3400 Response.pdf Request #6\_DOJ Agreement R-42-06 KCKPD\_2006.pdf

Request #10 & 12 - Runaways and Missing persons.pdf

Request #12 & 13 - Sexual assault.pdf Request #12 & 13 - Juvenile Procedures

2017.pdf

Request #12 - Discipline and Grievances

2014.pdf Request #12 - Discipline and Grievances

2017.pdf Request #12 - Discipline and Grievances

2016.pdf

Request #12 - Hate crimes.pdf

Request #12 - fop4-mou 2023-25.pdf

Request #12 & 13 - Juvenile Procedures 2014.pdf

Request #12 & 13 - Juvenile Procedures 2016.pdf

Request #16\_sworn serial numbers.pdf

Request #16 - Command Org.pdf

Request #16 - Locator 8-14-23.pdf

Request #16\_Civilian Serial Numbers.pdf

January 11, 2024, 4:32pm by Wendy Green, Attorney (Staff)

### 



Requester + Staff

We have uploaded the response from the Unified Government to the requests as well as numerous documents. We are continuing to review documents and more will be uploaded as soon as possible.

Thank you for your patience.

January 11, 2024, 4:32pm by Wendy Green, Attorney (Staff)





### Document(s) added ^



Staff Only

Request #23-3400\_Response.pdf

Request #6\_DOJ Agreement R-42-06 KCKPD\_2006.pdf

Request #10 & 12 - Runaways and Missing persons.pdf

Request #12 & 13 - Sexual assault.pdf

Request #12 & 13 - Juvenile Procedures 2017.pdf

Request #12 - Discipline and Grievances 2014.pdf

Request #12 - Discipline and Grievances 2017.pdf

Request #12 - Discipline and Grievances 2016.pdf

Request #12 - Hate crimes.pdf

Request #12 - fop4-mou 2023-25.pdf

Request #12 & 13 - Juvenile Procedures 2014.pdf

Request #12 & 13 - Juvenile Procedures 2016.pdf

Request #16\_sworn serial numbers.pdf

Request #16 - Command Org.pdf

Request #16 - Locator 8-14-23.pdf

Request #16\_Civilian Serial Numbers.pdf

January 11, 2024, 4:32pm by Wendy Green, Attorney (Staff)

### **\$** Invoice paid

Requester + Staff

\$2,202.48 paid online

January 9, 2024, 1:27pm by Kristen Dupard

### **☑** Message to requester



We have not determined the total number of documents that will be released. The title of the documents will include the associated request number(s).

January 4, 2024, 5:38pm by Sheri Courtney, Attorney (Staff)



### **☑** Message from requester



Requester + Staff

Thank you for providing this information. We will take care of the invoice.

Regarding the other portions of our communication, can you also please advise (1) the expected total volume of documents you anticipate producing and (2) how the Unified government intends to organize the documents. Given the multiple requests, having documents arranged according to each request would encourage efficiency and reduce potential confusion in reviewing the Unified Government's response.

January 3, 2024, 1:59pm by Kristen Dupard



🛗 Due date changed

Staff Only

02/06/2024 (was 01/03/2024). Extending 30 days for payment of invoice.

January 3, 2024, 11:14am by Daiana Balliett, Administrative Support Specialist

## \$ Invoice sent - \$2,202.48 ^

Requester + Staff

Charges associated with fulfilling this request are estimated at \$2,202.48. Once we have received your payment, the data file(s) will be compiled and released to you as they are ready.

Any overpayment will be refunded, and if additional payment is due, we will notify and invoice you accordingly before release of additional records.

This site allows you to pay for charges associated with your Kansas Open Request Act requests online using a Debit or Credit Card, which is the preferred method.

Payment can also be made by check or money order payable to: Unified Government Treasury. Checks are required to have the Name, Address, and Phone Number printed on the check. The driver's license number and date of birth may also be required.

The check should be mailed to:

UG of WYCO / Clerks Office

Attn: KORA #23-3400

701 N 7th St Rm. 323

Kansas City, KS 66101

Please contact us at 913-573-5260 if there are additional questions.

January 3, 2024, 11:14am by Daiana Balliett, Administrative Support Specialist



### **☑** Message from requester **△**



Requester + Staff

We wanted to follow up about our previous message that we sent on December 21, 2023, regarding payment.





### 



Requester + Staff

Thank you for your response. We will remit payment in the amount of \$2,202.48. Can you please let us know the volume of documents you expect to produce, both on January 3, 2024 and in total?

We further request that produced documents be identified and organized according to their respective request number to minimize confusion and encourage efficiency.

December 21, 2023, 4:02pm by Kristen Dupard





### **☑** Message from requester ^





Or check?

December 20, 2023, 9:44am by Kristen Dupard









How do we send the payment? Do you all accept credit card?

December 20, 2023, 9:43am by Kristen Dupard



### 🛗 Due date changed



01/03/2024 (was 12/12/2023). Due to the extensive and complex nature of this request, additional time is needed to research, compile and review records.

December 12, 2023, 6:30pm by Sheri Courtney, Attorney (Staff)



Requester + Staff

Due to the extensive and complex nature of this request, additional time is needed to research, compile and review records. A previous request by Roc Nation cost \$1101.24 to process. Because the scope of this request is more than twice as voluminous, we have doubled the estimated cost to complete this request to \$2202.48. Any overpayment will be refunded, and if additional payment is due, we will notify and invoice you accordingly before release of additional records. Once payment is received, we will endeavor to

release some material by 01-03-24. Please let us know if you wish to proceed.

December 12, 2023, 6:29pm by Sheri Courtney, Attorney (Staff)



### 

Anyone with access to this request

Removed: Police.

December 11, 2023, 4:42pm by Daiana Balliett, Administrative Support Specialist (Staff)

### Support staff removed

Staff Only

Vanessa Carvin

Joni Cole

Sheri Courtney

Thomas (T.J.) Tomasic

Tara Swan

Laura Monslow

December 11, 2023, 4:42pm by Daiana Balliett, Administrative Support Specialist (Staff)

### Support staff removed

Staff Only

Angie Lawson

December 11, 2023, 4:42pm by Daiana Balliett, Administrative Support Specialist (Staff)

### New point of contact

Staff Only

Angie Lawson

December 11, 2023, 4:42pm by Daiana Balliett, Administrative Support Specialist (Staff)

### 🛗 Due date changed

Staff Only

12/12/2023 (was 12/05/2023). processing request

December 5, 2023, 2:21pm by Theresa Kinsey (Staff)

### m Due date changed

Staff Only

12/05/2023 (was 11/28/2023). waiting on status

November 28, 2023, 10:15am by Theresa Kinsey (Staff)

## 🔍 Internal message 🔨

Staff Only

All assigned staff

sent email to Courtney, Conway, Santana, Dorsett

will delete the other KORA request as it is a duplicate since both requestors is on this request provided by Roc Nation

November 27, 2023, 4:16pm by Theresa Kinsey (Staff)



### Note

Staff Only

FYI - This appears to be the same request as #23-3438, except that the requesters are different

#### people.

November 21, 2023, 11:13am by Daiana Balliett, Administrative Support Specialist (Staff)



### 

Anyone with access to this request

Added: Legal.

November 16, 2023, 4:59pm by Daiana Balliett, Administrative Support Specialist (Staff)

### Support staff added

Staff Only

Wendy Green

Daniel Kuhn

Jeff Conway

Shanda Mitchell

Angie Lawson

November 16, 2023, 4:59pm by Daiana Balliett, Administrative Support Specialist (Staff)

### 🛗 Due date changed

Staff Only

11/28/2023 (was 11/21/2023). To process request

November 16, 2023, 10:12am by Theresa Kinsey (Staff)

### ☑ Message to requester ^



The Unified Government of Wyandotte County has received your Kansas Open Records Request. At this time, we estimate that it will take approximately 1 week to complete this request. We will let you know as soon as possible if there will be any cost associated with compiling this data.

Your patience is appreciated.

November 16, 2023, 10:12am by Theresa Kinsey (Staff)



### **☑** Message from requester



Requester + Staff

I was able to upload the request and now see the PDF document under the documents tab. Thank you.

November 16, 2023, 10:08am by Kristen Dupard



### Document(s) added

Staff Only

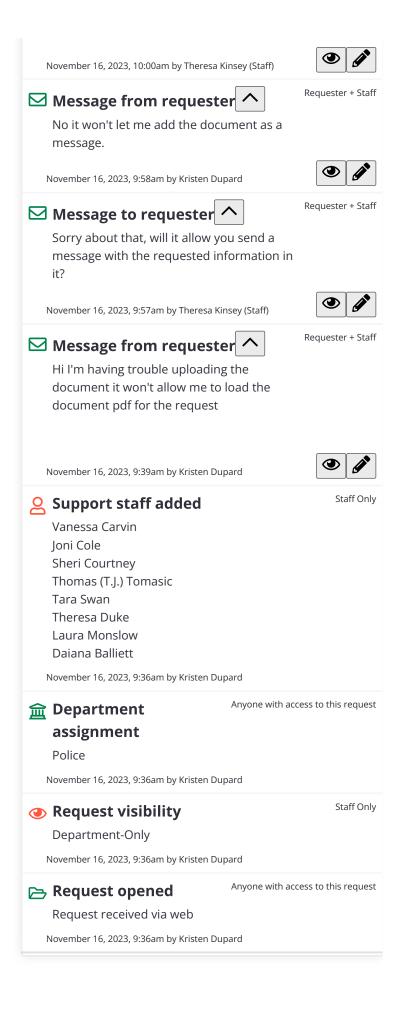
Jenner Block Roc Nation and Midwest Innocence Project KORA Request\_.pdf

November 16, 2023, 10:04am by Kristen Dupard

### **☑** Message to requester

Requester + Staff

Can you write the request out it in the message



FAQS Help Privacy Terms

CP CIVICPLUS

NextRequest



#### STATE OF KANSAS

#### OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN ATTORNEY GENERAL

May 9, 1991

MAIN PHONE: (913) 296-2215 CONSUMER PROTECTION: 296-3751 TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 91-50

The Honorable Anthony Hensley State Representative, 58th District 2226 Virginia Ave. Topeka, Kansas 66605-1357

Re:

Laws, Journals and Public Information -- Records Open to Public -- Certain Records Not Required to be Open; Personnel Records; Invasion of Personal Privacy

Synopsis:

If a public record qualifies as a personnel record, it may be closed pursuant to K.S.A. 1990 Supp. 45-221(a)(4), with the exception of the information noted therein. However, not every public record concerning public employees automatically qualifies as a personnel record. Public records may be closed pursuant to K.S.A. 1990 Supp. 45-221(a)(30) when public disclosure would constitute a clearly unwarranted invasion of personal privacy. Closure under this subsection may not occur if the elements of invasion of privacy are not present, if the invasion of privacy can be eliminated by deleting the identifying personal information pursuant to K.S.A. 1990 Supp. 45-221(d), by providing statistical information pursuant to K.S.A. 1990 Supp. 45-221(e), or if the individual whose privacy interest is at risk consents to the disclosure. Closure under K.S.A. 1990 Supp. 45-221(a)(4) or (a)(30) is discretionary not mandatory. Cited herein: K.S.A. 45-215; 45-216; 45-217; K.S.A. 1990 Supp. 45-221.

### Dear Representative Hensley:

As state representative for the fifty-eighth district you request our opinion on whether the Kansas open records act (KORA) requires or allows a Kansas school district to release a list of teachers participating in that school district's insurance plan.

The KORA, set forth at K.S.A. 45-215 et seq., declares that it is "the public policy of this state that public records shall be open for inspection by any person unless otherwise provided by this act. . . . " K.S.A. 45-216(a). K.S.A. 45-217(f) defines public record to mean "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency." The KORA does not require a public agency to create a document nor must it prepare a document in a certain form. See Attorney General Opinion No. 86-43; see also Annot. 100 A.L.R.3d 699, 703 (1980). The definition of a public agency, records of which must be disclosed pursuant to the KORA, is set forth at K.S.A. 45-217(e) and this definition encompasses Kansas public school districts. Thus, public records of Kansas school districts must be open unless there is law which requires or allows closure of the specific record.

The records you inquire about concern which teachers have chosen to utilize or take advantage of insurance benefits offered by and through a school district. Although we have not received information from the school district in question, we believe that such a record may take one of two forms. an individual chooses to receive an employer provided insurance benefit, such a choice ordinarily results in either a contribution by the employer, the reduction of the gross salary received by the employee, or both. Other amounts deducted from an employee's salary may include or reflect amounts deducted for taxes, unemployment insurance, social security, or deferred compensation plans. Salary information may reflect the amount of actual compensation received by an employee. Thus, payroll information concerning specific individuals may reflect the requested information. requested information may also be contained in a record or list which merely reflects the identities and numbers of persons partic pating in a specific insurance program provided by or made available through the employer. It therefore becomes necessary to determine whether any law allows or requires closure of these two types of records.

Exceptions to mandatory disclosure under the KORA are set forth at K.S.A. 1990 Supp. 45-221. We have thus far not received factual information from the school district in question concerning whether the information in question exists or is contained in a specific type of record nor has the school district informed us as to the law relied upon in closing this record. However, because the information requested concerns individual teachers, we believe that the most applicable exception to the KORA may be set forth at K.S.A. 1990 Supp. 45-221(a)(4), which provides in pertinent part:

- "(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:
- (4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of services of officers and employees of public agencies once they are employed as such."

As evidenced by the provisions of K.S.A. 1990 Supp. 45-221(a)(4), while certain personnel records may be discretionarily closed, the names of public employees cannot be closed pursuant to reliance upon K.S.A. 1990 Supp. 45-221(a)(4). Moreover, the amount of each employee's salary must be disclosed upon request. However, although the names, positions, salaries and lengths of services of the teachers must be disclosed, we find no authority supporting a claim that amounts deducted from salary are the equivalent of salary. Salary deductions is information that may impact upon the net salary received, but it is not generally considered the actual salary provided to each employee. However, if an employer provided benefit can be described as "salary", K.S.A. 1990 Supp. 45-221(a)(4) requires disclosure of that amount upon request. If the information requested is only contained in a record that is in fact a personnel record, and it is information which is not required to be disclosed pursuant to K.S.A. 1990 Supp. 45-221(c)(4), it may be discretionarily closed.

Not all records concerning a public employee will automatically qualify as a personnel record. See Attorney General Opinions No. 90-136 and 89-106. See also Annot. 100 A.L.R.3d 699 (1980). Because we do not have sufficient information concerning the record in question, we cannot determine whether it qualifies as a personnel record. If a public record does not qualify as a personnel record (which may be determined by examining such things as the use of, purpose for, and general access to the specific record), it must be disclosed pursuant to K.S.A. 45-215 et seq. unless an exception other than K.S.A. 1990 Supp. 45-221(a) (4) permits or requires closure of that record.

You inform us that the school district in question has refused disclosure of the record and "contends that privacy interests prevent it from disseminating the names of teachers." As evidenced by K.S.A. 1990 Supp. 45-221(a)(4), mere release of the names and salaries of public employees is not only permitted by the KORA, it is required. However, K.S.A. 1990 Supp. 45-221(a)(30) permits discretionary closure of "public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

As discussed in Attorney General Opinion No. 89-106, K.S.A. 1990 Supp. 45-221(a)(30) provides a narrow exception which is intended to protect information in government records that relates to the intimate details of a person's private life. See Annot. 26 A.L.R.4th 666 (1983). Mere release of the names of public employees ordinarily does not rise to the level of a "clearly unwarranted invasion of personal privacy." However, it appears that the requested information would link named individuals with participation in an employer provided insurance program. Thus, we must determine whether release of records reflecting that information would result in a "clearly unwarranted invasion of personal privacy."

Kansas recognizes the tort of invasion of privacy, but expressly precludes liability for public disclosure of facts that have entered the public domain. Rawlins v. Hutchinson Publishing Company, 218 Kan. 295, 305 (1975). The KORA personal privacy exception is similar to the personal privacy provision in the federal freedom of information act 'FOIA). In examining the FOIA, courts have held that embarrassment alone does not suffice to justify nondisclosure, Simms v. CIA, 642 F.2d 562 (D.C. 1980), and recognized that if the invasion of privacy is insubstantial, a superior public interest in disclosure

prevails, <u>Campbell v. U.S. Civil Service Commission</u>, 539 F.2d 58 (D.C. 1976).

The most probable form of privacy invasion claim available appears to be the tort of public disclosure of private facts which requires (1) a public disclosure, (2) disclosure of private facts rather than public ones, and (3) a matter made public which would be offensive and objectionable to a reasonable person of ordinary sensibilities. 62A Am.Jur.2d Privacy § 91 (1990). Thus, the school district may not rely upon K.S.A. 1990 Supp. 45-221(a)(30) in closing records unless these three elements are present.

The right of privacy is generally not applicable to publication of matters of public record. Id. at § 103. Courts have recognized that there is no invasion of privacy where an agency made employees names and addresses available to labor organizations seeking recognition through the elective process, or where an employer published and distributed to its employees, without the employees' permission, a credit sheet showing the wages and deductions of employees as an election tactic during an organizational campaign by a labor union. Id. at § 114. In general, disclosure of governmental records reflecting job related information has been declared by the courts not to be an invasion of privacy. See Tobin v. Michigan Civil Service Commission, 331 N.W.2d 184 (Mich. 1982); Annot. 26 A.L.R. Fourth 666, 675 (1983).

Records containing materials exempt from disclosure may be released with deletion of any closed information. K.S.A. 1990 Supp. 45-221(d); see also Kryston v. Board of Education, 430 N.Y.S.2d 688 (N.Y. 1980), International Business Machines Corp. v. State Dept. of Treasury, Revenue Division, 248 N.W.2d 605 (Mich. 1976). In addition, information that might otherwise be permissibly closed based upon the potential for invasion of privacy, may be released if the individual whose privacy interest is being protected consents to the release of that information. See Messina v. Lufthansa German Airlines, 441 N.Y.S.2d 557 (N.Y. 1981).

Without sufficient fact information we cannot determine whether K.S.A. 1990 Supp. 45-221(a)(30) permits closure of a specific record. However, this exception may be utilized only where there is a risk of clearly unwarranted invasion of personal privacy. We believe it doubtful that such a privacy action would prevail if the school district merely released

information concerning which employees participate in an insurance program, especially if either the individual's consent was obtained prior to release of the record or individually identifiable information was deleted.

In conclusion, if a public record qualifies as a personnel record, it may be discretionarily closed pursuant to K.S.A. 1990 Supp. 45-221(a)(4) with the exception of the information noted therein. However, not all public records concerning public employees automatically qualify as personnel records. Closure of public records pursuant to K.S.A. 1990 Supp. 45-221(a)(30) may discretionarily occur when public disclosure would constitute a clearly unwarranted invasion of personal privacy. Closure under this subsection may not occur if the elements of invasion of personal privacy are not present, if the invasion of personal privacy can be eliminated by deleting the identifying personal information pursuant to K.S.A. 1990 Supp. 45-221(d), by making statistical information available pursuant to K.S.A. 1991 Supp. 45-221(e), or if the individual whose privacy interest is at risk consents to the disclosure. Closure under K.S.A. 1990 Supp. 45-221(a)(4) or (a)(30) is discretionary not mandatory.

Very truly yours,

ROBERT T. STEPHAN

ATTORNEY GENERAL OF KANSAS

Therewa Marcel we kulls

Theresa Marcel Nuckolls

Assistant Attorney General

RTS:JLM:TMN:bas



### STATE OF KANSAS

#### OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN ATTORNEY GENERAL

October 14, 1991

MAIN PHONE: (913) 296-2215 CONSUMER PROTECTION: 296-3751 TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 91- 127

Mr. Stan Teasley
Executive Director
Kansas Commission on Veterans' Affairs
Jayhawk Tower, Suite 701
Topeka, Kansas 66603

Re:

Public Records, Documents and Information -Records Open to Public -- Certain Records Not
Required to be Open; Internal Civil Investigation
of State Employee

Soldiers, Sailors and Patriotic Emblems -- Kansas Commission on Veterans' Affairs -- Executive Director; Appointment, Powers and Duties; Employees

Synopsis:

Records pertaining to an internal investigation of an agency's employee, disclosure of which would not interfere with a prospective administrative adjudication or civil litigation nor disclose the identity of a confidential informant, may nevertheless be discretionarily closed if they fit the definition of a personnel record set forth in K.S.A. 1990 Supp. 45-221, as amended. specifically altered by law, the decision concerning how to exercise existing discretionary closure authority may be made by the official custodian or custodian of the record, as those terms are defined by K.S.A. 45-217(c) and (d). Cited herein: K.S.A. 45-215; 45-217; K.S.A. 1990 Supp. 45-221, as amended by L. 1991, ch. 149, § 11; K.S.A. 73-1207; K.S.A. 1990 Supp. 73-1208c; K.S.A. 73-1209.

\_

### Dear Mr. Teasley:

As executive director of the Kansas commission on veteran's affairs, you request our opinion on disclosure of specific records in the custody of your agency. These records pertain to an internal investigation of one of your employees. You inform us that you conducted this investigation as the result of an official grievance filed by one state employee against another and that this investigation ultimately resulted in disciplinary action against the employee in question. You advise that copies of these records have now been requested. We note that we have not been provided copies of the records in question. Thus, in reaching our conclusions we have relied upon your description and characterization of these records.

K.S.A. 73-1207 et seq. create the Kansas commission on veterans' affairs and delineate its functions. The position of executive director is created pursuant to K.S.A. 1990 Supp. 73-1208c, and the duties of executive director are set forth at K.S.A. 73-1209. The executive director is authorized to carry out the general policies of the commission relating to furnishing services to veterans, their relatives and dependents and the director has other powers and duties as the commission and the secretary of human resources shall confer or impose for the purposes of carrying out the provisions of this act. Thus, it is assumed that your investigation of the commission's employee and the compilation and maintenance of the investigative records in question occurred pursuant to authority conferred upon you by the commission and the secretary of human resources.

The Kansas open records act (KORA), set forth at K.S.A. 45-215 et seq., declares all public records open unless otherwise closed by law. The Kansas commission on veterans' affairs meets the definition of a public agency set forth at K.S.A. 45-217(e). The definition of a public record contained at K.S.A. 45-217(f) is broad enough to include the investigative report and relevant documents in question. Thus, these records are subject to the KORA and presumed open to anyone unless some law either permits or requires closure of the specific record in question.

- K.S.A. 1990 Supp. 45-221, as amended by L. 1991 ch. 149, § 11, establishes authority for closing certain types of public records. The pertinent subsections of this statute which may permit closure of the records in question include (a)(1), (4) or (11). We will examine each of these provisions.
- K.S.A. 1990 Supp. 45-221(a)(11), as amended, provides that a public agency shall not be required to disclose:

"Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent." (Emphasis added).

You inform us that the records in question were in fact compiled in the process of investigating alleged violations of civil law or administrative rules and regulations. Thus, it appears that these records fall within the description set forth at K.S.A. 1990 Supp. 45-221(a)(11), as amended. However, such records may only be discretionarily closed by a public agency "if disclosure would interfere with prospective administrative adjudication or civil litigation or reveal the identity of a confidential source. . . "

We are unaware of any facts indicating that disclosure of these records would reveal the identity of a confidential source. Further, you indicate that your agency has completed any disciplinary action pending against the investigated employee. Thus, it appears there is no prospective administrative adjudication or civil litigation involving your agency and these records. In addition to the requirement that there be prospective administrative adjudication or civil litigation, there must also be a determination that disclosure of the record would interfere with such adjudication or litigation. As adjudication by your agency appears complete, it is not possible for disclosure of the records to interfere with adjudication. Thus, based on the information you have provided, we do not believe this exception may be used to close the records in question.

K.S.A. 1990 Supp. 45-221(a)(4), as amended, provides alternative authority for discretionary closure if the specific records in question fit the definition of "personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment. . . ." Whether a specific record meets this definition is a fact specific question, but may in part be determined by examining the nature, content, use of and general internal access to the record in question. See Attorney General Opinions No. 89-106, 88-61 and 87-10. We have not been provided sufficient information to determine whether the records in question are personnel records, but if they are, K.S.A. 1990 Supp. 45-221(a)(4), as amended,

permits discretionary closure by the record custodian unless some other law specifically negates such exercise of discretion. See State Department of SRS v. PERB, 249 Kan. 163 (1991).

In addition to the discretionary closure authority cited above, K.S.A. 1990 Supp. 45-221(a)(1), as amended, recognizes that federal laws, state statutes, or Supreme Court rules may prohibit or restrict access to a specific record. Should such mandatory closure exist and apply to a specific record, the openness dictated by the KORA is essentially superseded by such mandatory directives. However, we have thus far been unable to locate a specific law prohibiting or restricting disclosure of records that are compiled in the process of a civil investigation conducted by the veterans' commission pursuant to an employee grievance complaint. Absent applicability of mandatory or discretionary closure authority, public records must be made available upon request.

If a record is mandatorily closed by a federal law, state statute or rule of the Supreme Court, or if it fits within the definition of a personnel record or a record compiled in the process of investigating a violation of civil law or administrative rules and regulations, disclosure of which would interfere with prospective administrative adjudication or civil litigation, such record may be closed by the public agency. Unless specifically altered by state law concerning the agency or record in question, the custodian or official custodian, as defined by K.S.A. 45-217(c) and (d), may make decisions concerning disclosure of public records which may be discretionarily closed. Thus, it is our opinion that, if the records in question may be discretionarily closed pursuant to K.S.A. 1990 Supp. 45-221, the commission on veterans' affairs may choose to close or open such records or may delegate to you the authority to make that decision.

Very truly yours,

ROBERT T. STEPHAN

ATTORNEY GENERAL OF KANSAS

Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:bas

## Kansas City, Kansas Police Department

**Standard Operating Procedures** 



## Internal Affairs Unit

Chief's Bureau

FEBRUARY 2018

The Internal Affairs Unit (IAU) is directly responsible to the Chief of Police, through the Chief's Executive Officer, and is therefore outside of the normal chain of command of the Police Department. IAU has the responsibility of coordinating and conducting independent investigations of complaints or allegations of misconduct against all members of the Department, sworn or civilian. The procedures established for handling complaints assure the prompt and thorough investigation of allegations to establish the facts and facilitate suitable disciplinary action, when necessary.

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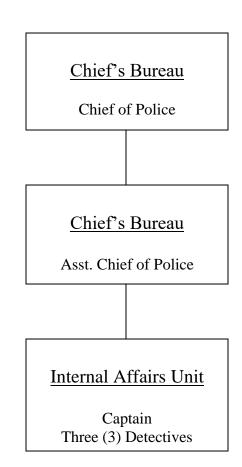
### INTERNAL AFFAIRS UNIT STANDARD OPERATING PROCEDURE

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UNI	T PURPOSES & OBJECTIVES	
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#### I. INTRODUCTION

The Internal Affairs Unit (IAU) is directly responsible to the Chief of Police, through the Assist Chief of Police, and is therefore outside of the normal chain of command of the Police Department. IAU has the responsibility of coordinating and conducting independent investigations of complaints or allegations of misconduct against all members of the Department, sworn or civilian. The procedures established for handling complaints assure the prompt and thorough investigation of allegations to establish the facts and facilitate suitable disciplinary action, when necessary.

### II. UNIT PURPOSE

- A. The Internal Affairs Unit is charged with the responisbility of conducting investigations that are thorough, accurate, and fair to the public, to the Department, and to the involved employee(s). Facts and fairness are the two principles upon which the Internal Affairs Unit is established.
- B. The Unit seeks to obtain factual information about all matters within its area of responsibility. The skill of an investigator will furnish vindication for an employee who has been falsely accused. On the other hand, if the facts justify, investigations can result in the correction of improper conduct or the removal of unsuitable employees from the Department. The gathering of all pertinent information by the members of the Unit permits factual decisions to be reached by the Chief of Police and/or prosecutors.
- C. Internal Affairs thoroughly and properly investigates complaints of misconduct involving Department employees when such complaints concern either violations of the law or Department policy. The investigation of such complaints will enable the proper authorities to evaluate the evidence to

- determine if charges or discipline are warranted, and if so, against whom.
- D. Internal Affairs will make findings of fact when appropriate, but does not make recommendations to the Chief of Police regarding the outcome of cases. The Chief of Police will determine the final disposition of completed investigations.

### **III. INTERNAL AFFAIRS MISSION STATEMENT**

The mission statement of the Internal Affairs Unit of the Kansas City, Kansas Police Department is to protect the public, the employee and the Department through fair, thorough, and impartial investigations of alleged misconduct.

### IV. INTERNAL AFFAIRS UNIT OBJECTIVES

- A. Protection of the Public: The public has the right to expect efficient, fair, and impartial law enforcement. Therefore, any misconduct by the Department members must be detected, thoroughly investigated, and properly adjudicated to assure the maintenance of these qualities.
- B. Protection of the Police Department: The Department is evaluated and judged by the conduct of individual members. It is imperative that the entire organization not be subjected to public censure because of the misconduct of a few of its members. When an informed public knows that its Police Department honestly and fairly investigates and adjudicates all complaints of misconduct against its members, they will have more confidence in the Department when alleged incidents of misconduct occur.
- C. Protection of the Employee: Employees must be protected against false allegations of misconduct. This can be accomplished consistently by exhaustive and accurate investigations.

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### I. CONFIDENTIAL NATURE OF INVESTIGATIONS AND FILES

- A. Misconduct, whether criminal or administrative in nature, may occur in any organization and must be addressed. However, many mistaken or even deliberately false accusations are made against Police Department members. some instances, even the most conscientious and hardworking members will be subject to such complaints or allegations.
- B. In order to ensure the integrity of the Department, it is necessary to completely and thoroughly investigate all complaints lodged against Department employees. At the same time, innocent employees must be protected to maintain morale and the effectiveness of police operations. This protection is best afforded when investigators practice confidentiality and tactfulness when conducting investigations.
  - Internal Affairs Unit investigators are prohibited from discussing investigations with other employees of the Department who are not involved in the investigation, and will not allow employees to view case files at any time.
  - Case files will be securely stored at all times.
  - 3. Inquiries from the news media will be handled by the Public Information Officer as outlined in General Order 50.01, Media Relations. Internal Affairs does not release any information regarding allegations.
  - 4. Only the Chief of Police or the Chief's Executive Officer may authorize the release of information from the Internal Affairs Unit. When copies of any documents are released, the release will be documented by having the receiving party sign a receipt.

- Criminal investigation information and/or employee data (i.e. date of birth, date of hire, social security number, etc.) may be shared with appropriate agencies within the criminal justice system. Any other release of information must receive prior approval of the Chief of Police.
- Accused employees and witnesses will only be given a copy of their own statements. A receipt will be signed for the copy of the statement.

### II. RELEASE OF STATEMENTS AND INFORMATION

- A. Accused employees and witnesses should be notified at the conclusion of the investigation, after all statements have been taken, to sign their statements. When requested, employees will be given a copy of their statement within one (1) business day. A receipt will be signed for the copy of the statement. No one is permitted to obtain copies of others statements without the permission of the Chief of Police or upon court order.
- B. Inquiries from anyone other the complainants or the accused employees' Bureau Director regarding the existence, progress, or outcome of IAU investigations will be referred to the Office of the Chief of Police or the public information officer.
- C. Subpoenas, court orders, etc..., requesting IAU documents will be directed to the Unified Government Legal Department for review.
- D. Complainant inquiries regarding the outcome of investigations will be answered by the members of the Internal Affairs Unit only to the extent of revealing the final disposition (e.g. unfounded, sustained, exonerated, etc.). If complainants request additional information, they will be referred to the Office of the Chief of Police.

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### I. COMMANDER AUTHORITY AND RESPONSIBILITY

A. Subject to the direction of the Chief's Executive Officer and the Chief of Police, the Internal Affairs Unit Commander has direct control of the Internal Affairs Unit. The commander will plan, coordinate, review, and direct the activities of the personnel assigned to the Unit and ensure their compliance with all Department rules, regulations, policies and procedures.

### B. Duties of the Commander

- 1. The commander will ensure that the Unit functions within the law, Department guidelines, rules, regulations, General Orders and the Unit S.O.P.
- 2. The commander will exercise authority commensurate with the position and responsibilities and will serve as an advisor to the Chief of Police on conditions and activities within the Internal Affairs Unit.
- 3. To the extent when possible, the commander will review every complaint that is filed to ensure that it is properly processed. If the nature of the complaint is deemed by the commander to be a grave or serious nature, notification of the Chief of Police or his designee will be initiated immediately. A Primary Information Report on all new complaints will be emailed to the Chief of Police, once it has been entered into the IAU database.
- 4. The commander will monitor the performance of all Unit personnel to ensure their proper and efficient conduct of business.
- The commander will inspect all facilities, equipment, and personnel assigned to the Unit to ascertain areas of deficiency and will cause or recommend the correction of any deficiencies detected.

- 6. The commander will make sincere efforts to ensure the maintenance of discipline, moral, and efficiency within the Unit.
- 7. The commander will make sincere efforts to appropriately resolve grievances, which may arise within the commander's area of responsibility.
- 8. The commander will be mindful of the necessity for confidentiality regarding the Unit's affairs and will instruct Unit personnel to do the same.
- 9. The commander will disseminate all appropriate Department related information to the Unit's personnel.
- 10. The commander will maintain the high standard of conduct, honesty and integrity commensurate with the responsibility of the Unit's mission.
- 11. The commander will perform any other duties that may be assigned by the Chief's Executive Officer or the Chief of Police.
- 12. The commander will serve as the agency's liaison with the prosecutor's office in investigations involving alleged criminal conduct on the part of an employee.
- 13. The commander will attend and participate in Department meetings and conferences when so instructed by the Assist Chief of Police or the Chief of Police.
- 14. The commander will conduct weekly meetings with Internal Affairs Unit Detectives for the purpose of determining the status of investigations and maintaining time limitations on investigations.
- 15. The commander will review IAU statistical information and notify the Chief of Police when any officer receives two or more assigned IAU complaints or

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3 or more "Other Contacts" within a 90-day period (G.O. 1.12 – Management Awareness Program). The IAU Commander will initiate a review of the involved officer per G.O. 1.12.

- 16. The commander will initiate the prompt investigation of any complaint of impropriety or misconduct by any employee of the Department, or any other investigation as directed by the Chief of Police.
- 17. At his discretion, the commander will personally respond to major incidents that would require an investigation by the Internal Affairs Unit. At that time, the IAU Commander will determine what reports should be completed.
- 18. The commander will maintain duty hours in accordance with the needs of the Unit, and to the extent practical should be available for duty at all times in case of emergency or special needs.
- 19. Whenever possible, the commander will review, for clarity and content, all materials and reports contained in the case files, prior to their submission to the prosecuting officials, court personnel, Bureau Directors, the Chief of Police, or other officials to ensure that all facts and information relative to the complaint is properly and accurately recorded.
- 20. The commander will assist in the preparation of the S.O.P., training manuals, in-service training programs, and any other duties assigned by the Chief of Police. Furthermore, the commander will participate in any meetings or conferences and instruct in any in-service training sessions in his or her area of expertise as directed.
- 21. The commander will provide for continuity of command during any absence.

INVESTIGATOR RESPONSIBILITY		TY
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### I. INVESTIGATOR RESPONSIBILITY

- A. Each investigator in the Internal Affairs Unit is directly responsible to the Internal Affairs Unit Commander for the investigators conduct and actions. As such, investigators will adhere to and diligently comply with all official and lawful orders or instructions from the superior officers in their chain of command.
- B. Subject to the direction of the Internal Affairs Unit Commander, investigators will execute the daily investigative activities of the Internal Affairs Unit.
- C. Duties of an Internal Affairs Unit Investigator:
  - Investigators will be responsible for documenting, supervising and controlling their assigned investigations.
  - 2. Investigators will assure that their performance and conduct, at all times, conforms to prescribed Department policies and procedures and is consistent with Department rules and regulations and any relevant collective bargaining agreements. Investigators will conform with all memorandums issued by superior officers and will adhere to all General Orders, the Memorandum Understanding, this S.O.P., and other appropriate instructions that may be issued by the Chief of Police, the Chief's Executive Officer, or the Internal Affairs Unit Commander.
  - 3. Investigators will keep apprised of currently accepted techniques regarding investigations, interrogations, interviews, search and seizure rules, collection and preservation of evidence, skill in testifying in court or grievance hearings, and will stay abreast of all legal stipulations and Department policies regarding these procedures.
  - 4. Investigators will promptly and thoroughly investigate all assigned cases

- and will accurately report all findings and meaningful information concerning each specific case.
- 5. Investigators will maintain a courteous and businesslike demeanor in the performance of duties and in contacts with the public.
- 6. Investigators will notify Internal Affairs Unit Commander immediately upon receipt of all new complaints.
- 7. Investigators will keep the IAU Commander updated regarding information obtained during their investigations on a weekly basis.
- 8. Investigators will perform any duties assigned by the Chief of Police, the Assist Chief of Police, or the IAU Commander.
- Investigators will utilize all available and appropriate investigative methods to conduct accurate, thorough, and complete investigations.
- 10. Investigators will monitor the progress of their investigations and ensure that it is completed in a manner that conforms to the time limitations imposed by collective bargaining agreements. This means that investigations must be completed in such a manner that sufficient time is allowed for the accused employee's Bureau Director to review the case file prior to it being sent to the Chief's Office for final review and disposition.
  - a. In the administrative investigations, the completed case file must be received by the Chief's Office with 120 days of the complainant signing their statement. The same 120 day time limit will be adhered to for all investigations involving civilian members of the Department. The civilian time limit can be extended at the discretion of the Chief of Police or the IAU Commander as it is not a

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negotiated term or condition of employment.

- b. In administrative special investigations, the completed case file must be received by the Chief's Office within 120 days of the Chief assigning the case for investigation. The same 120 day time limit will be adhered to for investigations involving civilian members of the Department. The civilian time limit can be extended at the discretion of the Chief of Police or the IAU Commander as it is not a negotiated term or condition of employment.
- c. In criminal investigations that the prosecutor declines to file charges on, the completed case file must be received by the Chief's Office within 90 days of the date the case is converted from a criminal case to an administrative investigation. same 90 day time limit will be adhered to for investigations involving civilian members of the Department. The civilian time limit can be extended at the discretion of the Chief of Police or the IAU Commander as it is not a negotiated term or condition of employment.
- 11. Investigators will maintain the highest standards of conduct, honesty and integrity commensurate with the responsibilities of the Unit's mission.
- Investigators will categorize and classify complaints in accordance with this Standard Operating Procedures (SOP) Manual.
- 13. Investigators will maintain confidentiality of all complaints or allegations of misconduct being investigated by the Internal Affairs Unit.
- 14. Investigators may utilize their Department issued vehicles in a "drive-home-and-park" mode. This means that they may drive the

- vehicle directly to and from their residences and the IAU office on a daily basis. They may also use the vehicles to respond to call-outs requiring their presence or other duty related functions, provided that these have been preapproved by the IAU Commander.
- 15. Investigators are expected to be available to respond to call-outs, which may require them to return to duty at any time. Whenever an investigator knows that he will be unavailable for call-out, he/she shall notify the IAU Commander prior to the end of his/her tour of duty. Investigators who develop a pattern of failing to respond to, or be available for call-outs shall be removed from the unit.
- 16. When it is necessary for IAU Detectives to work at times other than their normal duty hours, they will notify the IAU Commander prior to doing so. In addition, when working during the Night Commander's tour of duty, IAU Investigators will notify the Night Commander that they are on duty, unless otherwise instructed by the Chief of Police or IAU Commander.
- 17. The investigator will be expected to be available by Department issued cell phone and/or pager at all times unless otherwise coordinated with the Unit Commander.

OFFICE ASSISTANT'S RESPONSIBILITIES		
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### I. OFFICE ASSISTANT DUTIES AND RESPONSIBILITIES

- A. The Office Assistant is directly responsible to the IAU Commander for the employee's conduct and actions. As such, the Office Assistant will adhere to and diligently comply with all official and lawful orders or instructions.
- B. Duties of the Office Assistant include, but are not limited to:
  - Responsibility for the completion of accurate clerical work, including but not limited to the transcription of statements, correspondence, reports, memos, keeping of records, administrative details as assigned, and related work as required.
  - 2. Screening incoming telephone calls and distributing them appropriately.
  - 3. Properly greeting visitors arriving at the office, ascertaining their needs, and directing them accordingly.
  - 4. Ensuring all reports and correspondence are completed in a timely and professional manner.
  - The Office Assistant will prepare monthly and yearly reports as directed by the IAU Commander.
  - The ordering of all office supplies and track of such expenditures will be the responsibility of the Office Assistant. All purchases must be pre-approved by the IAU Commander.
  - 7. The Office Assistant will maintain high standards of conduct, honesty and integrity commensurate with the responsibilities of the Unit's mission.
  - 8. The Office Assistant will track all case files that have left the Unit's office and notify both the IAU Commander and, when appropriate, the employee's Bureau Director, when any limitations imposed by

collective bargaining agreements are within 30 days of expiring. These notifications will be made in email form based on the following:

- a. In administrative investigations, the completed case file must be received by the Chief's Office within 120 days of the complainant signing their statement.
- In administrative special investigations, the completed case file must be received by the Chief's Office within 120 days of the case being assigned for investigation by the Chief.
- c. In criminal investigations in which the prosecutor declines to file charges on, the completed case file must be received by the Chief's Office within 90 days of the date the case is converted from a criminal case to an administrative case.
- 9. The Office Assistant will adhere to the requirements of the law, applicable court decisions, the General Orders, the Memorandum of Understanding, this S.O.P., and other appropriate instructions that may be issued by the Chief of Police, the Chief's Executive Officer, or the Internal Affairs Unit Commander.
- The Office Assistant will maintain the confidentiality of all complaints or allegations of misconduct that are being investigated by the Internal Affairs Unit.

COMPLAINT CLASSIFICATION & CATEGORIES		
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### I. COMPLAINT CLASSIFICATION

- A. A complaint or allegation of misconduct by a member of the Department will be classified under one of the following classifications; if a complaint involves actions that could fall into more than one classification, the most serious classification will be used.
- B. The classifications are:
  - Force: A complaint may be made based on a use of force that is unreasonable or extreme or which is otherwise applied outside of the prevailing legal limits or Department policy. An allegation of excessive force could be categorized as either a criminal complaint or an administrative complaint. The Chief of Police will determine whether a force complaint will be investigated as a criminal complaint or administrative complaint.
    - a. If the Chief of Police determines that the complaint will be pursued as a criminal complaint, the complaint will be classified as a criminal or a criminal special complaint, and will be investigated in accordance with the procedures for investigating criminal complaints.
    - b. If the Chief of Police determines that the complaint will not be pursued as a criminal complaint, then the complaint will be classified as an administrative complaint or administrative special complaint, and the investigation will be completed in the manner prescribed for administrative investigations.
  - Violation of Civil Rights: Violation of civil rights is an allegation of a denial of a person's constitutional rights. Examples of this type of allegation may include, but are not limited to:
    - a. Illegal search and seizure, when there is no apparent indication of good-faith on the part of the accused officer.

- Physical abuse of a subject in custody that appears to be outside the scope of an officer's lawful authority.
- c. Denial of medical treatment of a subject in custody, etc.
- 3. <u>Missing Property:</u> A complaint of missing property could involve any personal property of a complainant that was taken from him/her and not returned, or which cannot be located, following their contact with a Department employee. Complaints alleging the theft of any article with intrinsic value should be classified as a criminal complaint.
- 4. <u>Harassment:</u> A complaint of harassment, although not supported by state statute (only telephone harassment is a violation of state statute), generally is an allegation that a person has been arrested, given citations, or stopped by the same officer or group of officers numerous times without legal grounds.
- 5. <u>Operational Procedure:</u> Operational procedure complaints are those complaints that allege a violation of Police Department's Policy, including but not limited to General Orders, rules and regulations, and memorandums.
- Conduct: Conduct complaints are violations of Department rules and regulations governing person conduct and the code of ethics. Examples of this classification may be, but are not limited to:
  - a. Using profane language or abusive language toward an officer or citizen.
  - b. Failing to provide courteous service.
- 7. <u>Police Service:</u> Police service complaints involve the lack of, or the avoidable delay of, police service. Examples of a police service complaint could be:
  - a. Refusal to take a necessary report.

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- b. Failure of an officer to take appropriate action or render assistance.
- 8. <u>Other:</u> This classification is any valid complaint not previously classified. Depending on the nature of the complaint, this classification could require either a criminal or administrative investigation. Examples of this classification of complaint could be:
  - a. Domestic violence involving a Department member.
  - b. Criminal allegation (e.g. burglary, theft, bribery taking or offering, etc).
  - c. Off-duty conduct.

### II. COMPLAINT CATEGORIES

- A. Administrative complaints involve allegations of misconduct not amounting to criminal complaints.
  - 1. Administrative complaints are further divided into three categories:
    - a. Administrative: The complaint is administrative in nature and was reported by a complainant alleging misconduct and did not originate from the Chief of Police or a Bureau Director; or, it is a criminal complaint declined by the appropriate prosecuting authority as outlined in General Order 50.5.
    - Administrative Special: The administrative complaint is investigated at the direction of the Chief of Police or a Bureau Director.
    - c. Other Contact: The complaint is of a minor administrative nature that does not rise to the level of a full investigation conducted by IAU and may be handled at the division commander level in the form of an inquiry that may or may not result in disciplinary action.

- B. Criminal complaints involve an alleged violation of state laws, federal laws, or Unified Government Ordinances, and will be reviewed by the appropriate prosecuting authority. Criminal complaints are further divided into two (2) categories:
  - Criminal: The complaint originated from a complainant other than the Chief of Police or a Bureau Director.
  - 2. Criminal Special: The investigation is undertaken at the direction of the Chief of Police or a Bureau Director.
- C. Criminal complaints that the appropriate prosecuting authority declines to file charges on will be converted to an administrative or administrative special investigation at the direction of the Chief of Police and further investigation (i.e. taking compelled statements) will be completed as needed.

IAU RECORDS SYSTEM		
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### I. INTERNAL AFFAIRS UNIT RECORDS SYSTEM

- A. Members of the Internal Affairs Unit will document all complaints filed against member(s) of the Department on a Primary Information Form immediately upon receiving the complaint.
- B. Investigations are divided into the following classifications:
  - 1. "1" Force
  - 2. "2" Violation of Civil Rights
  - 3. "3" Missing Property
  - 4. "4" Harassment
  - 5. "5" Operational Procedure
  - 6. "6" Conduct
  - 7. "7" Police Service
  - 8. "8" Other (Any investigation not falling into any other classification)
- C. The case investigator will assign a file number to the complaint using the automated system in the Internal Affairs Unit database. Should a complaint have multiple allegations that meet the classification criteria listed above, the complaint will be entered and filed by the Internal Affairs Commander utilizing the most serious allegation described by the complainant.
  - Any complaint alleging inappropriate use of force will be categorized as "1" – Force. Many complaints will have multiple allegations that fall into multiple classifications for Internal Affairs reporting purposes. Any allegation of force in a complaint will take priority for reporting purposes.
- D. Complaint Numbering System

- 1. Each complaint filed is issued an IAU file number. This system consists of one or two letters and six (6) numbers, for example: "AS13-5-019".
  - a. A letter designates each category of complaint as follows:
    - (1). "OC" designates another contact complaint.
    - (2). "A" designates an administrative complaint.
    - (3). "AS" designates an administrative special complaint.
    - (4). "C" designates a criminal complaint.
    - (5). "CS" designates a criminal special complaint.
  - b. The first two (2) numbers ("13" in the example) indicates the year in which the complaint was received, 2013.
  - c. The next number ("5" in the example) indicates the classification of the complaint, operational procedures. Complaints that involve allegations in more than one category shall utilize only the classification number of the most serious offense alleged.
  - d. The last number ("019" in the example) indicates the number of the complaint for that year.
  - e. Therefore, the above example indicates an administrative special complaint regarding a possible violation of an operational procedure and was the nineteenth (19<sup>th</sup>) complaint received in the year 2013.
- E. A file will be created by the Internal Affairs Unit for every complaint received and they will be stored in sequential order, with a new numbering system beginning each year.

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- F. An abstract of all complaints against Department personnel will be maintained by the Internal Affairs Unit.
- G. Completed files will be stored in a secure file cabinet(s) or a secured electronic database under the control of the Internal Affairs Unit.
- H. Internal Affairs Unit files are confidential personnel records and exempt from the Kansas Open Record Act KSA 45-215 et al.

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#### I. COMPLAINT PROCESSING

### A. Initial Contact Procedures

- 1. The Internal Affairs Unit personnel will document all contacts in which any allegation of misconduct or inappropriate behavior of any kind by a Department employee is alleged. These contacts will be recorded on a Primary Information Report. These reports will be completed prior to the end of the tour of duty in which the contact was made. A copy of all primary reports will be forwarded to the IAU Commander, who will forward them to the Chief of Police and Chief's Office Bureau Commander via email. At the Chief of Police or Chief's Bureau Director's discretion, the appropriate Bureau Director may be carbon copied along with the Assist Chief of Police. When the IAU Commander is absent for than one (1) day, the Acting IAU Commander will forward copies of the Primary Information Reports to the Chief of Police as previously described. A copy of all such primary information reports will be retained for the IAU Commander's review upon his/her return to duty.
  - a. Complaints of alleged misconduct, will be processed regardless of whether or not the complainant has a pending court date. Internal Affairs personnel, when contacting a complainant that is in custody, shall give consideration to providing the complainant with their Miranda warning. Factors to be considered are the depth questioning of the complainant that is anticipated and whether or not the questioning could potentially involve incriminating statements made by the complainant. Applicable current laws and Constitutional protections shall dictate the investigator's approach to the complainant with pending criminal charges.
- 2. On occasion, the IAU office will receive a complaint that does not warrant a full investigation. Other citizen complaints

- may be for general information only. In most cases, the Chief of Police or Chief's Office Bureau Director will be apprised of such complaints to ensure the incident does not rise to the level of being investigated. In instances that the Chief or Chief's Bureau Director concurs that no investigation is warranted, the information will be documented in the Internal Affairs Unit "Miscellaneous" database. In these instances, it is paramount that time is taken with the complainant to ensure that they understand why a limited inquiry will be conducted regarding their complaint. The following are examples of situations where a limited inquiry is required:
- a. The actions alleged are not a violation of any law or administrative policy, in which case the justification for the actions will be thoroughly explained to the satisfaction of the contacting person.
- The contacting person merely wishes to express their innocence of charges filed against them, in which case they will be advised that the matter must be resolved in court.
- c. The contacting person wishes to protest the towing of a vehicle, in which case they will be advised of the procedure for scheduling a tow hearing in municipal court.
- d. The contacting person does not wish to file a complaint, but would like to discuss the matter with the employee's supervisor. In these instances, the contacting person will be provided with the name and office telephone number the employee's Division Commander. An email will be forwarded to the Division Commander him/her providina with the complainant's name, phone number, and a brief synopsis of the complaint. The Division Commander will then contact the complainant.

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- When an allegation is made by a third party, other than a parent or guardian, the information will be forwarded to the Chief of Police on a Primary Information Report for his determination as to whether or not a special investigation will be initiated.
- B. Administrative Complaint and/or Criminal Complaint Procedures
  - 1. When a complaint is received from a complainant:
    - a. IAU Investigators who receive the complaint are to remain calm and business like. Personal attitudes are to remain objective at all times.
    - b. The complainant will be interviewed concerning the complaint. The IAU Investigator will have to determine the specific complaint since it may involve more than one officer or an officer from another jurisdiction. If the officer is from another jurisdiction, the complainant will be advised to contact the other jurisdiction.
    - c. Complaint numbers from associated reports will be required, as will CAD (Computer Aided Dispatch) and LERMS records to determine the officers involved. Once the specific complaint is determined, the investigator must ascertain how the complaint will be classified and categorized in consultation with the IAU Commander as necessary.
  - If criminal charges are filed by the DA's Office and if a Standard Offense Report hasn't already been completed one will be completed in LERMS. Detectives will notify the commander that the report is complete and uploaded for review. Once the report is approved the LERMS Administrator will be immediately called and notified so they can lock the report from general employee view.

- A recorded statement will be taken from the complainant and any witnesses, if present. Efforts should be made to locate witnesses who are not present at the time of the initial complaint and obtain statements from them. Statements will generally be taken in person. Telephonic statements will be reserved for unusual circumstances.
- 4. The complainant will be given a receipt of complaint/allegation form. The initial complaint/allegation form will be mailed to the complainant if taken by phone.
- 5. When the complainant alleges that he/she was injured as a result of their contact with a member of the Department and medical attention was received, the complainant will be asked to sign a Release of Medical Records Form. The investigator will then fax, mail or deliver the form in person to the medical facility.
- The complainant will be informed that their cooperation will be needed throughout the complaint process, including administrative hearings. Their failure to cooperate could result in the complaint being inactivated.
- Complainants will be informed that the Internal Affairs Unit is an investigative unit only, with the duty to conduct investigations and forward its findings to the Chief of Police and/or the appropriate prosecuting authority for review and final disposition.
- Complainants will be given a date as to when their statements should be ready to be verified and signed. When circumstances dictate that a specific time frame cannot be given, they will be advised that they will be notified by phone or certified letter.
- Complainants will be informed that they will receive a letter notifying them of the outcome of the investigation.

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- 10. Complainants who are obviously intoxicated or delusional (alcohol, narcotics, prescription medication, etc...) while filing a complaint will be advised to return when sober and a contact business card or complaint form will be given to them. A miscellaneous report documenting the contact should be completed and electronically stored on the "I" drive for Internal Affairs.
- 11. Investigations will not normally proceed until the complainant verifies and signs the transcribed copy of their recorded statement.
  - a. Complainants who fail to meet scheduled appointments or times to return and verify their statements will be sent a certified letter advising that they must contact the Internal Affairs Unit during business hours to reschedule an appointment and that failure to do so within seven days of receipt of the letter may cause the complaint to be inactivated.
  - b. If a complainant fails or refuses to cooperate, an attempt will be made to ascertain the reason.
  - c. If a complainant decides that they no longer which to actively pursue the case under investigation, effort will be made to obtain a signature from the complainant on a Request to Terminate Form. If the complainant refuses to sign the appropriate form, yet indicates that they will no longer assist in the investigation, then a memorandum detailing such condition will be forwarded to the IAU Commander, along with supportive documentation regarding the complainant's desire to terminate the investigation.
  - d. Complaints terminated due to a lack of cooperation will be submitted to the Chief of Police, by the Internal Affairs Unit Commander, to determine

- whether they should be investigated as an administrative special complaint. If the Chief of Police determines no further investigation is warranted at that time, the file will be inactivated. The contact then will be listed on the employee's IAU complaint record under the "Other Contacts" category. It will be noted on the complaint record that the complaint was "inactivated due to a lack of cooperation".
- e. A witness who refuses to cooperate will not influence the decision to investigate a complaint, but the complainant will be advised that the refusal of a witness to cooperate may have significant bearing upon the disposition of the complaint.
- f. Once a complainant verifies and signs their statement, the investigation will proceed according to the needs of the particular case. It is at this time that the investigation time limits, as outlined in the Memorandum of Understanding, will apply.
- C. Procedures in Criminal/Criminal Special Case
  - Employees accused in a criminal investigation will be afforded all of their constitutional rights guaranteed by every citizen of the United States.
  - Scheduling of interviews will be consistent with and conform to those guidelines concerning the same which are established in the Department's General Orders on Internal Affairs and any relevant collective bargaining agreements currently in effect at the time of the interview.
  - 3. Employee notification of complaint and order to report will be handled in the following manner:
    - a. The employee notification of complaint and order to report form will be used on all criminal investigations. This

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document formally notifies the accused employee of the complaint, whether it is a criminal, who the complainant is, and it also notifies the employee's Bureau Director of the complaint.

- 4. When the complaint is a criminal complaint, the accused employee has the option to have an attorney present during questioning. The employee notification and order to report form also informs the accused that if they wish to give a statement concerning the matter, the assigned investigator must be contacted and they must give their statement before a specific date. This allows time for the accused to arrange for and consult with legal representation, if they so desire.
- 5. If the interview is scheduled in advance, the supervisor delivering the order must sign it and return it to the Internal Affairs Unit.
- 6. The investigator will select a "no later than" date for the accused employee to contact the investigator.
- 7. If the accused elects to give a statement in an Administrative case, an appointment will be set for a time with no less than twenty four (24) hours' notice. Although Internal Affairs will make every effort to arrange a convenient interview time for a criminally accused employee, no advance notice is required.
- 8. If the employee received the order, as indicated by the return of the signed form, and failed to respond, the case file is to be sent to the appropriate prosecutor for review without a statement from the accused.
  - Accused employees will be informed of the nature of the basic facts known to IAU at the time relating to the investigation before any interrogation/interview commences.

(1). Prior to taking the statement, the investigator will fill out the notification of charges/allegations form, informing the accused emplovee of the specific allegations known to the investigator at the time. The employee will also be advised the name of the complainant(s) unless there is a compelling reason not to do so.

### b. Advise of Rights

- (1). The Advise of Rights form is the "Miranda Warnings" required on all criminal investigations. Although normally the Miranda Warning is only given to a person who is in custody and not free to leave, it is given in internal investigations so there is no confusion that the investigations is criminal and that the statement is completely voluntary. This document will be signed by the accused, acknowledging the receipt of the warnings.
- (2). If the employee elects to give a voluntary statement without an attorney present, the accused employee will sign the Waiver of Rights on the form stipulating to those facts. The Advise of Rights and Waiver of Rights form will be completed and a copy can be given to the accused member. The original will remain in the case file.
- c. Privilege of the accused. An unusual situation may exist in the Department when two (2) employees are married to each other and one is called as a witness against his or her spouse who is the accused.
  - (1). KSA 60-423 states that in situations involving the assertion of spousal privilege, the witness spouse member may be questioned regarding matters not

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considered confidential communications. In these types of situations, the witness spouse member may be questioned about their personal observations. Keep in mind that communications overheard by third parties destroy the privilege.

- d. Witness employees: An employee of the Department who is considered to be a witness only at the inception of the investigation has few rights, whether in a criminal or an administrative investigation. Police Department employees are required to accurately report what they saw or heard when asked.
  - (1). Witness employees may be sent an Order to Report (Witness Only) form to be delivered by their supervisor. This informs them that they are considered a witness only and instructs them to contact the investigator to arrange appointment to give a statement. To expedite an investigation, investigators may contact a witness member directly and request them to report to Internal Affairs for a statement. However, if the witness member fails to keep the appointment, the investigator will send the Order to Report form.
  - (2). The Criminal/Administrative Proceeding Rights (Witness Only) form, informs witness employees that they are not entitled to representation, have no right to refuse to answer questions, and be disciplined insubordination for refusal. If the standing as a witness changes to accused, then the interview will terminate until further notice. Witness emplovees will required to sign this form prior to the taking of their statement.

- (3). The Criminal Witness Submittal form orders employee witnesses to submit a report (give a statement) as a condition of employment. A compelled statement can only be used in administrative proceedings, as set out in *Garity vs. New Jersey*, 385 US 483 (1967).
- e. Witnesses who are not employees of the Department can be forced, under certain circumstances, to give testimony in a criminal investigation, but this testimony must be summoned by a subpoena from the appropriate prosecuting authority.
- D. Criminal/Criminal Special Case Completion
  - In criminal complaints, the completed case file will be sent to the appropriate prosecuting authority for the possible filing of charges. The IAU Commander, or in his absence, the case investigator will deliver the file to the prosecutor's office. The prosecutor or his staff will sign a receipt for the case file. The receipt will be retained by the IAU.
  - 2. In cases of Domestic Violence, the assigned investigator will expedite presentation of the case to the appropriate prosecuting authority for review. If the prosecutor decides to file charges at that time, the Chief of Police shall be notified immediately. If the investigative file is not complete at that time, the assigned investigator will expedite the completion of the investigation, to include the taking of the suspect officer's statement, provided a waiver of his rights has been secured.
  - 3. If the appropriate prosecuting authority files charges, the prosecutor's office will retain the file. If the prosecutor declines prosecution and keeps the copy of the file sent to him/her, an administrative case file will be created from the original copy held in internal affairs. The assigned investigator will have ninety (90) days to complete any additional investigation (i.e.,

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compelled statements) and send the file to the appropriate Bureau Director for review. The Chief of Police will then have thirty (30) days to render a final disposition.

- a. If the prosecuting authority files criminal charges, a back-up copy will be submitted to the Chief of Police for an administrative review after a disposition has been reached on the criminal charges, and any additional investigation (i.e., compelled statements) requested by the Chief of Police is completed.
- E. Procedures in Administrative/Administrative Special Case
  - Employees accused in an administrative investigation will be afforded all of their rights as set out in the General Orders, Rules and Regulations, and any relevant collective bargaining agreements in effect at the time.
  - 2. Scheduling of interviews will be consistent and conform to those guidelines concerning same which are established in the Department "Internal Affairs Unit" General Order and any relevant collective bargaining agreements which are currently in effect at the time the interview takes place.
  - 3. Employee Notification of Complaint and Order to Report
    - a. The Employee Notification Complaint and Order to Report form will be used in all administrative investigations. This document formally notifies the accused member of the complaint, whether complaint is criminal а or administrative complaint, who the complainant is, and also notifies the members Bureau Director of the complaint.
    - b. When the complainant is an administrative complaint, accused

- employees covered by the MOU with F.O.P. have the option to have a representative of the lodge present when they are interviewed. Other employees may also be granted this option by similar collective bargaining agreements. The Notification and Order to Report form also informs the accused that they do not have the right to refuse to answer questions regarding the allegations, and that they are ordered to contact the investigator and schedule an appointment.
- c. If the interview is scheduled in advance, the supervisor delivering the Order to Report must sign it and return it to the Internal Affairs Unit.
- d. The investigator will select a "no later than" date for the accused employee to contact the investigator.
- e. When the accused member responds to the order, the investigator will ordinarily set an appointment for the employee to give a statement at a date no later than seven (7) days, unless extenuating circumstances dictate a longer time delay is necessary. Any such deadline extension will be reported to the IAU Commander.
- f. The F.O.P., Memorandum of Understanding, Article 13, requires that the "Department shall give no less than twenty-four (24) hours' notice of scheduled interview/interrogation." This applies only to sworn officers in the bargaining unit in Administrative investigations and pertains to the accused. There is no advance notice needed in a Criminal Accused interview.
- g. If the accused employee received and signed the Order to Report, but fails to arrive at the scheduled time, the investigator will notify the IAU Commander.

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- h. The IAU Commander will, depending on the circumstances of the complaint, contact the Bureau Director of the accused officer and have the accused member ordered to report to the Internal Affairs Unit immediately. If the accused employee cannot be contacted, the Chief of Police will be notified of the failure to respond to an Order to Report to the Internal Affairs Unit.
- 4. The Administrative Proceedings Rights form is required on all administrative investigations. This document informs the accused employee of certain rights: that they do not have the right to remain silent; that failure to answer questions will result in a direct order from the Chief of Police to answer questions; that any admission cannot be used against them criminally, and in the case of the F.O.P., members and possibly some other employees, that they have the right to labor representation at the time of their interview.
  - a. Employees who are F.O.P. members will be required to sign Waiver/Request to Secure Lodge Representation form indicating whether or not they wish to have a representative when interviewed. Other employees who have been granted similar rights by other labor agreements will be asked if they wish to exercise their right. If they decline, their refusal will be documented in their statement. Any third party present, including such representatives, will be identified on the record at the outset of the accused employee's statement.
  - b. If the accused employee is entitled to and requests representation, a "reasonable" amount of time will be allowed for the arrival of the representative. If the interview was unscheduled and a representative cannot respond at that time, the employee will be ordered to return at

- a specific date and time, at least twenty-four (24) hours later to give their statement. If the employee fails to return as ordered on the next date, or again desires representation but has no representative present, the IAU Commander will be notified.
- c. A compelled statement can only be used in administrative proceedings, as set out in *Garity vs. New Jersey, 385 US 483 (1967)*. The Administrative Submittal form orders employees to submit a report (give a statement) as a condition of employment. This not only satisfies Department guidelines, but it also provides the employee with the added protection of ensuring that their statement cannot be used against them in any subsequent criminal proceeding.
- d. If the officer refuses to answer the questions after the issuance of a *Garity Waiver*, the officer can be disciplined for insubordination.
- Accused employees will be informed of the nature and the basic facts and the specific allegations known to the Internal Affairs Unit at the time relating to the investigation before any interview commences.
  - a. Prior to taking the statement, the investigator will fill out the Notification of Charges/Allegations form, informing the accused employee of the specific allegation. The employee will also be advised the name of the complainant unless there is a compelling reason not to do so.
- Employees of the Department who are considered to be a witness only at the inception of the investigation have few rights, whether in a criminal or an administrative investigation.
  - a. Witness members may be sent an Order to Report (witness only) form to

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be delivered by their supervisor. This informs them that they are considered a witness only and instructs them to contact the investigator to arrange an appointment to give a statement. To expedite an investigation, investigators may contact a witness member directly and request them to report to Internal Affairs for a statement. However, if the witness member fails to keep the appointment, the investigator will send the Order to Report.

- (1). The Criminal/Administrative Proceeding Rights (witness member) form, informs witnesses that they are not entitled to representation, have no right to refuse to answer questions, and disciplined be for can insubordination for refusal to If the employee's answer. standing as a witness changes to accused, the interrogation will terminate until further notice.
- 7. The Administrative Submittal form governs employees as to submitting a report (give a statement) as a condition of employment. This not only satisfies Department guidelines, but it also provides the employee with the added protection of ensuring that their statement cannot be used against them in any subsequent criminal proceeding.
- 8. Non-member witnesses. Witnesses who are not members of the Department cannot be forced to give statements in an administrative investigation.
- Employees may be required to submit to a medical or laboratory examination, at the agency's expense, when the examination is specifically directed and narrowly related to a particular internal investigation.
- 10. Any employee may also be required to be photographed, to participate in a line-up, and/or submit a financial disclosure

statement when the actions are material to a particular internal investigation.

- F. Administrative/Administrative Special Case Completion
  - 1. Upon completion of the investigation, the case file will be reviewed by the assigned investigator and then submitted to the IAU Commander for approval.
    - If necessary, the IAU Commander may return the file to the investigator for additional information.
  - If necessary, the Order to Report may be used to compel witness employees and those accused in administrative investigations to return to the Internal Affairs Unit and sign their statement.
  - 3. In administrative complaints, the completed file will be forwarded to the employee's Bureau Director for review. The IAU Commander, or in his absence, the case investigator, will deliver the file to the Bureau Director. The Bureau Director or his staff will sign a receipt for the case file. The receipt will be retained by IAU. After any further investigation requested by the Bureau Director is completed, the file will then be returned to the IAU Office and then prepared for the Chief of Police for review and final disposition.
  - 4. The Chief of Police will review the case file and render a decision regarding the complaint, noting his decision in the file by indicating one (1) of the six (6) standardized dispositions, and return it to the Internal Affairs Unit.
  - 5. There are 6 (six) classifications for disposition, they are:
    - a. Unfounded The investigation indicates that the alleged act(s) did not occur or did not involve police personnel.

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- Exonerated The investigation indicates that the alleged act(s) did occur but were justified, lawful, and proper.
- c. Not Sustained The investigation failed to produce sufficient evidence to clearly prove or disprove the allegations.
- d. Not Involved The investigation establishes that the accused employee was not involved in the alleged incident.
- e. Policy Failure The act did occur and was found to be consistent with or in the absence of governing policy. The investigation revealed that the policy itself requires revision or that a new policy be implemented.
- f. Sustained The investigation disclosed sufficient information to clearly prove the allegation made in the complaint.
- 6. The Internal Affairs Unit will prepare a letter of disposition to be forwarded to the complainant.
  - a. The letter will be signed by the Chief of Police & the Internal Affairs Unit Commander, and then mailed to the complainant.
  - b. The subject of the complaint will be notified of the final disposition.
    - (1). If discipline was issued, the subject receiving discipline will be notified at the time it is issued.
    - (2). If no discipline was issued, a letter will be sent to the subject notifying them of the disposition of the case as it pertains to that individual. The Chief of Police and the Internal Affairs Unit Commander will sign the letter.

### G. Other Contact Complaints

- Other contact complaints are complaints that the Internal Affairs Unit Commander has determined are complaints or allegations of a less severe nature, and they may be sent to the accused employee's division commander for review and cursory investigation.
- 2. The complaint will be sent to the division commander via email as soon as possible, no longer than twenty-four (24) hours from the time the IAU Office received the complaint. The Chief of Police, the Assist Chief of Police, the accused officer's Bureau Director, and appropriate Bureau Director's Executive Officer will be copied on the email so that the entire chain of command is notified of the complaint.
- If the complaint was taken over the telephone, the complainant will be mailed a copy of the Receipt of Allegation(s) form. If the complainant responded to the IAU Office, this form will be given to the complainant prior to them leaving the IAU Office.
- 4. The division commander will have fourteen (14) days to render a decision and take action of the complaint. The IAU Commander will track the fourteen (14) day time period and will send an email reminder to the division commander three (3) business days prior to the expiration of the time limit.
- When the division commander sends his findings back to the IAU Commander, via email, the entire chain of command should be copied.
- 6. Other contact complaints will be documented in the accused officer's IAU The division complaint record book. commander will use the six classifications utilized by the Chief of Police regarding dispositions IAU on investigations. Refer to F; 5; a-f.

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- H. Sworn officer's photo album: The Internal Affairs Unit will maintain a photo album or other record of photos of all sworn and civilian employees of the Department for identification purposes.
  - 1. Complainants who file a complaint, but do not know the name of the involved employee(s) may be shown photos of employees in an effort to make a positive identification.
  - The photos will only be shown to complainants who actually file a complaint and witnesses to complaints under investigation.
  - 3. Photos of officers assigned as undercover officers will not be shown without the permission of the Chief of Police.

### II. INTERVIEWS/STATEMENTS & OTHER INVESTIGATIVE CONSIDERATIONS

- A. Interviewing is an individual skill, and is something that has to be learned. The basics of interviewing can be taught, but the skill of interviewing can only be developed by diligent practice.
  - Become familiar with the case and facts before the accused employee is interviewed. Normally the accused employee's statement will be taken last.
  - Consider possible questions before the interview, and then develop additional questions during the interview.
  - 3. Interview in private. Generally, an employee will talk more freely in private. This method will also lessen background noise, which makes transcribing difficult.
  - 4. Refrain from asking "leading questions". A leading question is one that suggests a possible answer, which will normally result in only a "yes" or "no" answer.
  - 5. Refrain from asking questions that be answered by "yes" or "no". This hinders

- the investigator's ability to obtain information.
- Complainants who have had other negative contacts with police officers have a tendency to bring up the past and include those complaints in the present investigation. The investigator must keep them focused on the current complaint.

### **III.IAU GUN LOCK BOX**

- A. The IAU gun lock box may be used to secure weapons belonging to members of the Department who are the focus of a criminal or administrative investigation. The lock box should be used in the following manner:
  - 1. When an IAU investigator interviews and/or interrogates a member of the Department, who is the focus of a criminal or administrative investigation, the investigator may have the accused member secure all weapons in the IAU lock box prior to conducting the interview/interrogation.

### IV. VIDEOTAPING OF STATEMENTS

A. All interviews will be video recorded and retained on the hard drive until storage space is full. After hitting full capacity the server will continually delete the oldest file making room on the 4 terabyte storage device. All accused interviews will be further downloaded onto a disk and added to the case file. All other videos may be added to the case file on a needs basis or at the discretion of the IAU Commander.

RECORD RETENTION POLICY – SWORN & CIVILIAN					
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## I. SWORN & CIVILIAN COMPLAINT RECORD BOOKS

- A. The Internal Affairs Unit will maintain an IAU record on each employee. The record will contain categories for each type of complaint. In addition to the classification of complaint, the record will contain:
  - 1. The employee's name, serial number, date of hire, date of birth, and social security number.
  - 2. Date of the allegation.
  - 3. Complainant's name, except in cases in which the Chief of Police authorizes this information to be omitted.
  - 4. IAU file number.
  - 5. Disposition (including discipline issued, if any).
  - 6. Date purged.
  - 7. A brief synopsis of the allegations.
  - 8. Once the file has been reviewed by the appropriate commander and a disposition has been given, if necessary, a brief synopsis of the disposition included. For instance, if a complaint is "sustained in part" and "not sustained in part", this should be explained in the synopsis section.

#### II. RECORD RETENTION

A. The documents shall be retained for the time period specified in Series 230 – Record Retention Policy (III & IV).

## III.IAU RECORD RETENTION POLICY OF INVESTIGATIONS & CITIZENS COMPLAINTS

A. Regarding record retention it is important to remember it is not the way the case is classified i.e. other contact, criminal, or administrative but rather if the complaint is criminal (felony or misdemeanor) or an administrative (non-

- criminal) case. Kansas Statutes K.S.A. 75-3501 75-3518 and K.A.R. 53-2-115 govern internal affairs complaint files.
- B. Electronic Copies of all complaint files will be retained on the "IA Server" and ITX.
- C. Record retention will consist of:
  - 1. Felony Case Retain forever.
  - 2. Misdemeanor Cases Retain until five years after the employee has separated employment.
  - 3. Administrative Cases Retain for five years or until all grievances and litigation has concluded whichever is greater.
- D. Documents should not be destroyed if there is pending litigation or appeals. Any recording not transcribed should be maintained in accordance with the above prescribed schedule.

# IV. RECORD RETENTION POLICY - SWORN & NON-SWORN MEMBERS' COMPLAINT RECORD BOOKS

- A. The sworn/non-sworn members' complaint record books are an abstract of complaints that sworn and non-sworn members have received while employed with the Kansas City, Kansas Police Department. Information contained in these documents is confidential and consists of the following: date complaint was received, name of complainant, IAU file number, synopsis of the allegation, and disposition of the complaint. These documents should be retained as follows:
  - 1. Retain for five (5) years after the named employee separates from the Kansas City, Kansas Police Department.
  - A non-editable copy of the departing member's IAU complaint record should be forwarded to the office of the Chief of Police immediately upon separation from the Department. This will become part of the employee's personnel jacket.

	IAU MONTHLY REPORTS	
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#### I. MONTHLY REPORTING

- A. A monthly summary report of the IAU office's activities, for the previous month, will be prepared and delivered to the Chief of Police on or before the 5<sup>th</sup> of every month.
- B. The report should include the information on the following topics:
  - A list of complaints received by the IAU office, listed alphabetically by the officer's last name.
  - 2. Comparison of complaints received between the current month and the same time period for the previous year.
  - 3. Other Contacts A disposition of the Other Contact complaints that were reviewed by the division commanders.
  - 4. Police Conduct Hotline Provide a synopsis of all complaints received on the hotline.
  - 5. Bias Based Policing Provide a synopsis of all bias based policing complaints, to include the disposition of the complaint.
  - 6. OICI Team Investigations Provide a synopsis of all new investigations and the status of any ongoing investigations.
  - 7. Early Warning Notification List any early warning notifications that were made for the month and attach a copy of the packet to the monthly report.
  - 8. Miscellaneous Information Provide the Chief with any additional information that he should be made aware of that is not covered in any of the above listed topics.
  - A list of complaints reported per division, a list of all active I.A. cases and a summary of those active cases assigned to each IAU investigator.
- C. Distribution of the monthly summary will be as follows:

- 1. Copy to the IAU file.
- 2. Original to the Chief of Police.
- Accreditation File Only a statistical report should be forwarded to the accreditation staff. No documentation should be forwarded for the inclusion in the accreditation file that discloses an accused employee's name.
- D. Annual Statistical Summary The Internal Affairs Unit Commander will publish an annual statistical summary of complaints, dispositions, and unit activity. The report shall be delivered to the Chief of Police on or before January 31 of every year. The annual report will categorize the complaints based upon the most serious allegation being alleged by the complaint, although the investigation may include multiple allegations of various types of misconduct.
- E. Annual Accreditation Summary The accreditation staff will provide a statistical summary of all complaints and their dispositions on or before January 31 of every year.

JOINT INVESTIGATION PROCEDURES					
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This procedure will be adopted by the Kansas City, Kansas Police Department to implement a cooperative means of investigating complaints, where the personnel from multiple law enforcement jurisdictions are involved in an incident, in which allegations of misconduct of wrong doing are made against the officers or personnel. When personnel from another law enforcement agency are alleged to be involved in the incident, that agency will be provided with a copy of this policy and given an opportunity to participate as a joint investigating agency.

#### **II. JOINT INVESTIGATIONS PROCEDURES**

- A. A joint investigation may only be requested upon written request from the Chief of Police to the other law enforcement agency administrator, or form a law enforcement administrator to the Chief of Police. The written request shall include the date, time, and location of the alleged incident, as well as a brief description of the alleged misconduct or wrong doing, and the name(s) of the complainant(s). The request for the joint investigation may also be made and/or responded to by the respective designate of the Chief of Police. Cooperation is important in determining the facts of the incident.
- B. Upon receipt of the written request, the Chief of Police shall direct the Internal Affairs Unit Commander to contact the other agency involved as soon as practical.
- C. If the joint investigation is classified as criminal, it will be submitted to the Wyandotte County District Attorney or the appropriate prosecuting authority for review and disposition of any criminal charges.
- **D.** The joint investigation classification of criminal or administrative will be determined by the Internal Affairs Unit Commander, after conferring with the Chief of Police or his designate, in conjunction with the Wyandotte County District Attorney.

#### **III.RELEASE OF DEPARTMENT DOCUMENTS**

A. The agencies participating in the joint investigation may share information pertinent

- to the investigation and such information shall be included in the file.
- B. Home addresses and telephone numbers of officers will not be released to the media, even if the joint investigating agency obtains the information.
- C. Individual photographs or photo line-ups of agency personnel will not be released without permission of the law enforcement agency administrator. If it is necessary to show up the complaint(s) or witness(s) a photo line-up of personnel, each employing agency will create a photo line-up consisting of that agency's personnel. Each employing agency will maintain control of their personnel line-up. An investigator for the employing agency will present the line-up to the complaint(s) or witness(s) for identification purposes. Photo line-ups will be made part of the investigation file.

#### **IV. STATEMENTS**

- A. If the complainant(s) has already provided a statement to an agency prior to the request for a joint investigation, the agency in possession of the statement shall share the statement information with the other agency(s) involved.
- B. Investigators should make every effort to coordinate the taking of statements with the joint investigating agency(s) at a time that is convenient for both. However, agencies must be mindful of the time constraints imposed by collective bargaining agreements, statute of limitations, and other regulations.
- C. Only an employer of an accused employee can order a compelled administrative statement of an employee.

#### **V. CASE FILE MANAGEMENT**

- A. The working file shall be maintained by the originating agency while the case is under investigation.
- B. Upon completion of the file, a copy will be provided to each agency administrator for

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review and disposition. Each agency administrator will be responsible for determining if any improper behavior/policy violations occurred that involved their personnel. Any improper behavior/policy violations from other agency personnel will be handled by the respective officer's agency administrator.

- C. Commenting on the actions of another agency's personnel is improper and shall be avoided. Each agency administrator must have the confidence and trust of fellow administrators when joint investigations are conducted. It is the responsibility of each agency administrator to determine what, if any, remarks will be made concerning their personnel.
- D. The information contained in internal investigative files is not an open record under Kansas Statute and should only be released in accordance with appropriate agency policy.

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#### I. ELECTRONIC FILING OF IAU CASE FILES

#### A. IAU Case Files

- All administrative and criminal case files should be scanned into the IAU electronic filing system (ITX) & "IAU Server" once they have received a disposition from the Chief of Police.
- B. Purging of Administrative & Criminal Electronic Case Files

#### 1. Administrative Cases

 A request will have to be made to the Technology Unit to delete administrative cases from the electronic filing system when they reach the criteria established in the IAU Record Retention Policy (Series 230).

#### 2. Criminal Case

- a. Felony Case Retain forever.
- b. Misdemeanor Cases Retain until five years after the employee has separated employment.

## II. INSTRUCTIONS FOR IAU SCANNING DATABASE

#### A. Data Entry

- 1. Double click on the [Internal Affairs Server Data] icon on your desktop.
- 2. In the **[IAU Number]** field, enter the IAU file number.
- 3. In the [Rep Date] field, enter the date the complaint was reported to IAU.
- 4. In the **[Violation]** field, enter the Rules and Regulations number(s) that the officer was found to be in violation of (this could also be a General Orders number, if that is what the Chief should list as being violated).

- 5. In the **[Dispo]** field, select the appropriate disposition from the drop down menu.
- 6. In the **[Referred]** field, enter the appropriate agency that the case file was referred to such as: FBI, DEA, or KBI.
- 7. In the **[Type]** field, enter the type of case from the drop down menu.
- 8. In the **[Category]** field, enter the appropriate IAU complaint category from the drop down menu.
- 9. In the **[Statute]** field, enter the appropriate Kansas Statute.
- 10. In the **[Location]** field, enter the location where the incident occurred at.
- 11. In the **[Search]** field, you do not have to enter any data. This box is used to search the database for a particular case.

#### B. Complaint(s)

- 1. In the **[Last Name]** field, enter the complainant's last name.
- 2. In the **[First Name]** field, enter the complainant's first name.
- To enter more than one complaint, use the arrow buttons to the right of the number one (1). Click the [►\*] to add an additional name. You should see the number two (2) displayed and the first & last name fields should be clear.
- 4. The red **[X]** button on the left side is to delete the entry from the system.

#### C. Accused

- 1. In the **[Last Name]** field, enter the accused officer's last name.
- 2. In the **[First Name]** field, enter the accused officer's first name.
- 3. In the **[Serial #]** field, enter the accused officer's serial number.

ELEC	TRONIC FILING OF IAU CASE	FILES		
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- 4. To enter more than one accused officer, use the arrow button to the right of the number one (1). Click the [▶\*] to add an additional name. You should see the number two (2) displayed and first and last name fields should be clear.
- 5. The red **[X]** button on the left side is to delete the entry from the system.

#### D. Witness(s)

- 1. In the [Last Name] field, enter the civilian or officer witness' last name.
- 2. In the **[First Name]** field, enter the civilian or officer witness' first name.
- 3. In the **[Serial #]** field, enter the witness officer's serial number.
- 4. To enter more than one witness, use the arrow button to the right of the number one (1). Click the [ ▶\*] to add an additional name. You should see the number two (2) displayed and the first and last name fields should be clear.
- 5. The red **[X]** button on the left side is to delete the entry from the system.
- 6. If there are no witness(s), you must retype the word "None" in the last name field in order for the database to function properly when conducting a search.
- E. Blue Buttons in Upper Right Hand Corner
  - ▶\* Add a new record.
  - 2. Move forward to the next record.
  - Move backward to the last record.

**[STOP]** To exit program.

#### F. Scanning Procedures

- 1. On the copier, push the **[Scan/Fax]** button.
  - a. Select the **[IA Reports]** button.

- b. Push the [Color] button.
- c. Push the [TIF] button.
- d. Push the [Page Separation] button.
- e. Push the **[OK]** button.
- f. Place the case file in the document tray (be sure that all staples have been removed from the file and that the documents are in the correct order – if this is not done, it will be difficult to index the file correctly).
- g. Push the [Start] button.

#### G. Creating Batch File

- Double click on the [SI-3000 login] icon on your desktop.
  - a. The username and password is the first letter of your name, followed by your last name no spaces.
  - b. Click on [WIP Batch Import Process].
  - c. In the Select Documents Database, select **[IA documents]**.
  - d. In the Select WIP/Batch Folder, select [Internal Affairs WIP Folder].
  - e. In the Select Generic Document Type, select [Internal Affairs 8.5x11 Document].
  - f. Click the **[Select Directory]** button.
  - g. In the drive window, select [z:\\pdprint\router].
  - h. Click the [Accept] button.
  - i. Click the [Process] button.
- When it is done processing, write down the Batch Number so you can be sure you are working with the correct batch. Click [Exit].

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#### H. Indexing Process

- 1. Click on the **[SI-3000]** icon on your tool bar and select **[Show Menu]**.
- 2. Select [IA Queries].
- 3. Select [Batch Scan Options].
- 4. Select [IA QA Scanned Batch].
- 5. Select [View Data].
- Double click on the batch number you wrote down.
- 7. Double click on the first document at the top of the list. Make sure that this is the first page in the case file.
- 8. In the Tag Select window, click on the drop down arrow.
- 9. Select [Internal Affairs].
- 10. Select **[Image]** and then select the appropriate title for the document (i.e. Case Index Form, Incident Report, Accused Officer Statement, etc.).
- 11. If this is a multiple page document that you are indexing, put a check in the **[DUP]** box.
- 12. Tab over to the Index Tab and type in the Internal Affairs file number and put a check in the **[DUP]** box.
- 13. Scroll down in the information window to see if your file number is there. If it is, continue on.
- 14. In the Notation Window, add anything that may distinguish what the document is. For instance, you may have multiple memos, so you would type something like the last name of the person it is from and the title of who it is for (i.e. Breshears to Chief, Nicholson to IA Commander, etc.).

- 15. In the Date Window, type in the date that the document was generated. For time, place all zeros in the spaces. On Accused and Witness Officer Statements, enter the date the statement was actually taken and use this date when indexing the Order to Reports, Notification of Allegations, etc. Place a check in the **[DUP]** box.
- 16. Once this is complete, click the **[Single Diskette Icon]**.
- 17. If the next page is a continuation of the previous, make sure everything is correct and then click the [Multi-Diskette Icon]. This will link the pages together.
- 18. Repeat this process until all of the documents have been indexed. You will receive a message that you are at the end of the batch when you are finished. Go back and check the indexing to ensure that all of the documents are linked together correctly. If they are not linked and labeled correctly, notify the supervisor so it can be corrected before proceeding.
- SUPERVISOR ONLY Once everything has been checked, go to the upper left hand corner to the [Batch] button, and select [Release Batch] [Local]. You are now ready for the next file.

	EARLY WARNING SYSTEM	
DATE ISSUED:	DATE REVISED:	SERIES:
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#### I. EARLY WARNING REPORT

- A. Each month, the Internal Affairs Unit Commander will make a report to the Chief of Police of any officer who has triggered and Early Warning Notification.
- B. A Bureau Director may request a complete list of all complaints against officers under his or her command for their discretionary use.

OUTSIDE INTERNAL AFFAIRS DISCIPLINE		
DATE ISSUED:	DATE REVISED:	SERIES:
March 2010	FEB 2018	270

## I. OUTSIDE INTERNAL AFFAIRS RECORDS DISCIPLINE

- A. When a person [Reporting Party] contacts any Department supervisor and if that supervisor starts an investigation he shall at the conclusion of the investigation document the encounter. The supervisor will, after all grievance procedures are finalized, send documentation to the Internal Affairs Unit so a permanent record will be established.
  - 1. Date of Report
  - 2. Complainant
  - 3. Type of Complaint
  - 4. Disposition
  - 5. Violation
  - 6. Synopsis
- B. Records Retention will follow Records Retention Policy Sworn / Civilian on page 20 of this SOP.
  - An electronic copy of the employee's discipline will be retained in the Internal Affairs server inside the employee's permanent internal affairs record and it will be given a specific number. Example "OIA 17-1".
    - a. OIA Outside Internal Affairs
    - b. 17 Year
    - c. 1 Number this record came in during the year.



# Unified Government Human Resources Guide

Effective 04-01-05

#### EMPLOYEE PRIVACY AND ACCESS TO PERSONNEL RECORDS

I. General: It is the policy of the Unified Government to establish a centralized system of personnel files for all employees. This will enable a centralized response to requests for information about employees, and the development of access and copying procedures. As used in this policy, employee includes both current and former employees.

#### II. Policy

- A. The Director of Human Resources is the official custodian of the individual personnel records for current and former employees of the Unified Government. The originals of the individual files for all Unified Government employees shall be in the physical custody and control of the Director of Human Resources.
- B. It is the intent of the Unified Government to comply with provisions of the Open Records Act while protecting the individual employee from the unwarranted invasion of personal privacy.
- C. A department head or his/her designee may provide the following information regarding an employee in response to a request: name, dates of employment, position and verification of compensation. No further information shall be given out except with the approval of the Human Resources Department.
- D. An employee's access to his/her personnel file:
  - 1. The employee may, upon written request, examine his/her own personnel file in the presence of Human Resources personnel or department designee, except that viewing certain types of documents may be restricted. Such restrictions shall include but not be limited to:
    - a. pre-employment letters of reference;
    - b. results of pre-employment testing; and
    - c. legal advice about the particular employee.
  - 2. An employee may request a copy of a non-restricted document by utilizing the Request to Access Personnel Records form.
  - 3. An employee may challenge any information within his/her personnel file, and his/her written response will be added to the file, subject to approval by the Human Resources Director or designee.
- E. Access to the employee's individual personnel file may only be given to:
  - 1. designated employees in Human Resources;
  - 2. the Administrator or a designated representative;
  - 3. the employee's supervisor—if written authorization has been given by the department head;
  - 4. the employee's division and department head or their designee;



# Unified Government Human Resources Guide

Effective 04-01-05

- 5. the head of a division or department which is considering accepting the transfer of the employee to such division or department;
- 6. legal counsel authorized by the Legal Department;
- 7. a duly authorized representative of a law enforcement agency or court of law; or
- 8. anyone who, in the judgment of the Director of Human Resources, establishes a valid need for any of the information in the file. Such request shall be written.
- F. Information regarding the medical condition or history of any job applicant or employee obtained as a result of a medical examination or injury shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that:
  - 1. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
  - 2. First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment, and
  - 3. Government officials investigating complaints with the Americans with Disabilities Act or Kansas Act Against Discrimination shall be provided relevant information on request.
- G. Breaches of the confidentiality of personnel files and other employee information shall be subject to discipline, up to and including discharge.
- H. Information regarding any employee's or their dependent's health condition, health insurance enrollment, coverage information, or any medical claims history may be obtained from the Unified Government's Employee Benefit Plan (the Plan), through assistance of the Human Resources Department, in accordance with the Unified Government's applicable Privacy Policy(ies) adopted pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPPA). The employee should contact the Plan's Privacy Official in the Human Resources Department to receive a copy of these policies or to address any other HIPPA related questions.

RELATED FORM(S): Request to Access Personnel Records

June 18, 1997

#### ATTORNEY GENERAL OPINION NO. 97-52

Harold Walker, City Attorney Ninth Floor - Municipal Office Building 701 North Seventh Street Kansas City, Kansas 66101

Re:

Laws, Journals and Public Information--Records Open to Public--Lists of Names and Addresses Derived from Public Records; Exception to Disclosure

#### Synopsis:

K.S.A. 45-216(a) requires public records to be open for inspection unless the record falls within one of the exemptions listed in K.S.A. 1996 Supp. 45-221 or other applicable law. K.S.A. 1996 Supp. 45-221(a)(4) allows closure of some records concerning public employees. Under this exception, personnel/employment records identifiable to an individual public employee may be closed, except that names, positions, salaries and lengths of service of public employees are required to be disclosed. Home addresses of public employees may be closed pursuant to K.S.A. 1996 Supp. 45-221(a)(4). Alternatively, a public employee's home address is "information of a personal nature," the public disclosure of which could constitute a clearly unwarranted invasion of personal privacy, thus allowing closure under K.S.A. 1996 Supp. 45-221(a)(30). To the extent their conclusions conflict with those stated herein, Attorney General Opinions No. 89-106 and 90-136 are hereby withdrawn. Cited herein: K.S.A. 45-216; K.S.A. 45-220; K.S.A. 1996 Supp. 45-221, as amended by 1997 H.B. 2105; K.S.A. 21-3914.

\* \* \*

#### Dear Mr. Walker:

On behalf of the City of Kansas City, Kansas, you request our opinion regarding whether a public entity may deny a request to disclose the names and addresses of public employees. Specifically, you inquire about a situation where the requestor is seeking the names and addresses of the public employees of the Board of Public Utilities and the City of Kansas City, Kansas. [We note, for purposes of *SRS v. PERB*, *infra*, that the requestor is not a union.] The Kansas Open Records Act (KORA) declares the public policy of the state to be that "public records shall be open for inspection by any person" and the KORA is to be "liberally construed and applied to promote such policy." K.S.A. 45-216(a). The effect of this statute is that all public records are open unless otherwise permissibly or mandatorily closed by law. K.S.A. 1996 Supp. 45-221(a) lists various categories of records which a public agency may discretionarily close. The provisions applicable to your question are K.S.A. 1996 Supp. 45-221(a)(4) and (a)(30), which state:

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

. . . .

"(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.

. . . .

"(30) Public records containing information of a personal nature where public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

Two prior Attorney General Opinions considered whether public employees' home addresses are mandatorily open. Attorney General Opinion No. 89-106 concluded that home addresses are mandatorily open, but Attorney General Opinion No. 90-136 suggests that they may be closed if maintained only as a personnel record. These prior opinions have been criticized as unfairly requiring public employees to disclose their home addresses, when private employees are not under the same obligation. Disclosure of a home address can present real safety problems for public employees, making them unable to avoid stalkers or abusive spouses. We note that there has been a recent trend to allow closure of more home addresses that are contained in public records, such as the Driver's Privacy Protection Act of 1994, 18 USC 2721, et. seq.

In concluding that home addresses of public employees are subject to mandatory disclosure, Attorney General Robert T. Stephan, in Opinion No. 89-106, did not address the language of K.S.A. 45-221(a)(4), but rather relied on cases from other jurisdictions interpreting either the federal Freedom of Information Act (FOIA), 5 U.S.C.S. § 552, or other states' open records acts which contained exceptions similar to the FOIA. Based on that case law, the Attorney General reached the conclusion that public employees' home addresses are open because public employees do not have a privacy interest in their home addresses.

The FOIA exempts from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C.S. § 552(b)(6). The federal cases cited in Attorney General Opinion 89-106 concluded that public employees' home addresses were subject to mandatory disclosure; one case calling the privacy interest "relatively minor." Attorney General Opinion No. 89-106 at 4 citing *Getman v. N.L.R.B.*, 450 F.2d 670 (D.C. Cir. 1971); *Kurzon v. Department of Health and Human Services*, 649 F.2d 65, (1st Cir. 1981); *Robles v. Environmental Protection Agency* 484 F.2d 843 (4th Cir. 1973). Subsequent United States Supreme Court case law, however, finds the privacy interest in a home address to be much more important than stated by these lower courts.

In *United States Department of Defense v. Federal Labor Relations Authority*, 510 U.S. 487, 114 S.Ct. 1006, 127 L.Ed. 2d 325 (1994), the Court analyzed a FOIA request by labor unions for home addresses of employees of federal agencies. The Court said in analyzing the FOIA exception for clearly unwarranted invasions of privacy, a balancing test must be employed weighing the public interest in disclosure against the interest Congress intended the exemption to protect. 510 U.S. at 495. The Court said the only relevant public interest to be weighed is whether disclosure would significantly contribute to public understanding of the government operations and activities, and not the purposes for which the specific information request was made. 510 U.S. at 495-96.

The Court found that public employees have a high degree of privacy interest in their home addresses, saying:

"Many people simply do not want to be disturbed at home by work-related matters. Employees can lessen the chance of such unwanted contacts by not revealing their addresses to their exclusive representative. Even if the direct union/employee communication facilitated by the disclosure of home addresses were limited to mailings, this does not lessen the interest that individuals have in preventing at least some unsolicited, unwanted mail from reaching them at their homes. We are reluctant to disparage the privacy of the home, which is accorded special consideration in our Constitution, laws, and traditions. . . . Moreover, when we consider that other parties, such as commercial advertisers and solicitors, must have the same access under FOIA as the unions to the employee address lists sought in this case . . ., it is clear that the individual privacy interest that would be protected by nondisclosure is far from insignificant." 510 U.S. at 501 [citations omitted].

The Court held, under the facts, that the privacy interest substantially outweighed the public interest in disclosure, so the agencies' refusal to divulge the addresses was upheld. 510 U.S. at 502.

The state cases cited in Attorney General Opinion No. 89-106 also used a balancing of interests test. In *Warden v. Bennet*, 340 So.2d 977 (Fla. Ct. App. 1976), the court reached its decision to require disclosure of home addresses of public employees by balancing the public's right to know against the employees' right to be free from "clearly unwarranted invasions of privacy." *See also*, *Wisher v. News-Press Publishing Co*, 310 So. 2d 345 (Fla. 1975). In *State ex. Rel Public Employees Retirees, Inc.*, 397 N.E.2d 1191 (Ohio 1979), the court's decision to disclose home addresses of public employees was based on a balancing of the interests test using the state's privacy act, Ohio Rev. Code Ann. § 149.43. In *Webb v. City of Shreveport*, 371 So.2d 316 (La. Ct. App. 1979), the court based its decision to disclose home addresses of public employees on a finding of no privacy expectation in home addresses. In *State Employees Ass'n v. Dept of Mgt. & Budget*, 404 N.W. 2d 606 (Mich. 1987), the court based its decision to disclose home addresses of public employees on the Michigan Freedom of Information Act which contained an exception for "clearly unwarranted invasion of privacy." M.C.L.A. § 15.243(1)(a).

We note that more recent cases that apply a balancing of the interests test to home addresses have tended to come out in favor of allowing closure of the addresses. See, e.g., **Painting** and Drywall Work Preservation Fund, Inc., v. Department of Housing and Urban Development, 936 F.2d 1300 (D.C. Cir. 1991) (release of names and addresses of employees of public contractors would constitute a substantial invasion of privacy not outweighed by public interest); United States Department of Defense v. Federal Labor Relations Authority, supra; Zink v. Commonwealth, 902 S.W.2d 825 (Ky. App. 1995) (disclosure of home addresses of workers' compensation claimants would constitute a clearly unwarranted invasion of privacy); Kentucky Attorney General Opinion 93-ORD-118, (disclosure of public employees home addresses would constitute a clearly unwarranted invasion of privacy under Ky. Rev. Stat. Ann. § 61.878); Tribune-Review Publishing Company v. Allegheny County Housing Authority, 661 A.2d 677 (Pa. 1995) (payroll records of certain public employees were not subject to disclosure under the Pennsylvania Right to Know Act because they contained the employees' home addresses, home telephone numbers and social security numbers, release of which would jeopardize the personal security of the employees). But see Guard Publishing v. Land County Sch. D., 791 P.2d 854 (Or. 1989) (home addresses of certain public employees were open under the Oregon Public Records Law and not a clearly unwarranted invasion of privacy).

Additionally, there are now several cases in other jurisdictions with provisions similar to K.S.A. 45-221(a)(4) that have decided the question without resort to a discussion of privacy interests

and balancing tests.

Rhode Island's Access to Public Records Act contains a provision exempting from the definition of a public record:

"All records which are identifiable to an individual applicant for benefits, clients, patient, student or employee, including, but not limited to personnel . . . records . . . provided, however, with respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits [and certain other specified data] shall be public." 1996 R. I. Pub. Laws 38-2-2(d)(1).

The Rhode Island Supreme Court did not use any sort of balancing test or privacy test to determine if information falling under this provision should be disclosed; in fact, the Court specifically rejected any such test. See, *Providence Journal Co. v. Sundlun*, 616 A.2d 1131, 1136 (R.I. 1992). In *Providence Journal Co. v. Kane*, 577 A.2d 661, 663, 665 (R.I. 1990), under an earlier version of the statute which did not mandate disclosure of name, salary, etc., the court held closed information regarding place of birth, date of birth, date of marriage, employment history, and address.

In *Pulitzer Pub. v. Missouri State Employees' Retirement System*, 927 S.W.2d 477 (Mo. App. 1996), the court considered Missouri's statute which exempted from mandatory disclosure:

"Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, except that this exception shall not apply to the names, positions, salaries and lengths of service of officers and employees . . . . " Mo. Ann. Stat. 610.021(13) (Vernon 1997 Supp).

The records request was for pension information about former governors. In determining what information was mandatorily open and what could be closed (home addresses and telephone numbers), the court did not use a balancing of the interests test. Instead, it recognized that the legislature in drafting a specific statute had already exercised its judgment as to what the public is entitled to know and what information could be closed to protect privacy interests. 927 S.W.2d at 483.

Kansas appellate courts have not considered whether disclosure of public employees' home addresses is mandatory or discretionary under the KORA. In *State Dept of SRS v. Public Employee Relations Board*, 249 Kan. 163 (1991), the Kansas Supreme Court held that home addresses of public employees within a bargaining unit are subject to disclosure, but by virtue of Public Employer-Employee Relations Act. The Court specifically found "[n]either PERB nor the Union are subject to the limitations of KORA." 249 Kan. at 170. In *Tew v. Topeka Police & Fire Civ. Serv. Comm'n*, 237 Kan. 96 (1985), the Court ordered disclosure of records of applicants for a public position, but the Court was applying the old Public Records Inspection Act, K.S.A. 45-201, which was replaced by the KORA.

When the question of openness of employees' home addresses was again addressed by Attorney General Stephan in Attorney General Opinion No. 90-136, no specific conclusion was reached. Instead the opinion focused on whether the information was contained in a "personnel record." However, the language of the statute does not seem to limit it's application to records within the personnel file. K.S.A. 1996 Supp. 45-221(a)(4) lists three categories of records which may be exempt from the disclosure requirement: "personnel records, performance ratings or individually identifiable records," all of which must pertain to the public agency's employees or applicants for employment. Statutory construction of the use of "or" treats all three categories as separate and distinct from each other rather than regarding them as interchangeable definitions of one category of records. "In its elementary sense the word

'or,' as used in a statute, is a disjunctive particle indicating that the various members of the sentence are to be taken separately." 73 Am.Jur.2d *Statutes* § 241. *See also* Black's Law Dictionary 1095 (6th ed. 1990) ("Or" defined as "a disjunctive particle used to express an alternative or to give a choice of one among two or more things"). In our opinion, the three categories of records are not to be regarded as interchangeable definitions but rather the performance ratings and individually identifiable records are to be treated as separate categories of records, and not necessarily the same as personnel records that are part of the personnel file.

The legislative history of K.S.A. 45-221(a)(4) supports the conclusion that the three types of records mentioned should be treated as separate. The first draft of KORA, introduced in 1981 to the Kansas House of Representatives by Representatives Whitaker and Louis as House Bill 2104 did not include a disjunctive "or," nor did the statute list individually identifiable records as an exempted category. The K.S.A. 45-221(a)(4) exemption was originally drafted as:

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

. . . .

"(4) Personnel records and performance ratings, except that this exemption shall not apply to the names, positions salaries and lengths of service of officers and employees of public agencies."

The original draft of the statute contained an "and" between personnel records and performance ratings. The 1981 bill was referred to the House Federal and State Affairs Committee but was never acted upon. When introduced a second time in 1983 and passed in 1984, the enacted KORA, which is the current K.S.A. 1996 Supp. 45-221(a)(4), exempted "personnel records, performance ratings or individually identifiable records." These revisions demonstrate the legislature's intent to exempt the category of individually identifiable records from mandatory disclosure and, more importantly, for the three categories of records to be treated as separate and distinct from each other. We believe that the legislature intended to allow closure of personnel/employment records identifiable to an individual public employee no matter where the record is kept, except for names, positions, salaries and lengths of service.

In summary, we believe that in enacting K.S.A. 1996 Supp. 45-221(a)(4), the legislature intended to create three types of personnel or employment records which could be closed at the discretion of the agency. The only such information which must be disclosed is names, positions, salaries and lengths of service. Home addresses may be "individually identifiable records pertaining to employees" and therefore not subject to mandatory disclosure. Alternatively, a public employee's home address is "information of a personal nature," the public disclosure of which could constitute a clearly unwarranted invasion of personal privacy, thus allowing closure under K.S.A. 1996 Supp. 45-221(a)(30). Attorney General Opinions No. 89-106 and 90-136 are withdrawn to the extent they conflict with conclusions reached herein.

Very truly yours,

CARLA J. STOVALL Attorney General of Kansas

Steve Phillips Assistant Attorney General

### CJS:JLM:SP:jm

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Comments to: WebMaster, ksag [at] washburnlaw.edu.

Processed: March 18, 2002.

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## KORA Open Records Request Form UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS

### SECTION TO BE COMPLETED BY REQUESTOR:

NAME:
ADDRESS:
CONTACT NUMBER:/_ E-MAIL ADDRESS:
SIGNATURE:
Copies Sought: Please provide the most specific description of the desired record(s) copies. Include record titles and applicable dates as well as the names of Unified Government agencies or departments which produced or hold the desire record(s):  Record / Title / Date  Number of Copies
1
2.
3.
ASSOCIATED CHARGES
Administrator. These charges are set at a level intended to compensate the Unified Government for the actual costs incur in honoring your request. Payments shall be made by check or money order payable to: <u>Unified Government Treasury.</u> Checks are required to have the Name, Address, and Phone Number printed on the check. The driver's license number a date of birth may also be required.  CHARGES  Staff time necessary to comply with request (charged in 15 min increments):  Administrative - \$24.83 per hour  Professional - \$35.04 per hour  In addition to Staff time the following charges will be assessed:  5 pages or less
The Unified Government may require prepayment if the estimated charge exceeds \$25.00. The full charge, if it exceeds the estimated charge, is due and payable upon delivery.
Unified Government agencies have a responsibility to protect certain records from disclosure; therefore <i>Legal Departme</i> approval may be required.
TO BE COMPLETED BY UG OF WYCO PERSONNEL
Date of request:// Time of receipt:
Date provided://Time request satisfied:Time Involved: Hours Mins
Total Charge: \$
Staff Signature:

#### **KORA Open Records Request Form**



### **CERTIFICATION**

The person signing this Certification has submitted the attached request for records to the Unified Government of Wyandotte County/Kansas City, Kansas, and hereby certifies:

- 1. That he/she and any entity on whose behalf the request is being submitted does not intend to and will not use any list of names or addresses contained in or derived from the records or information obtained from the Unified Government of Wyandotte County/Kansas City, Kansas, for the purpose of selling or offering for sale any property or service to any person on the list or to any person who resides at any address on the list.
- 2. That he/she and any entity on whose behalf the request is being submitted does not intend to and will not give, or otherwise make available to any person or entity, any list of names or addresses contained in or derived from the records or information obtained from the Unified Government of Wyandotte County/Kansas City, Kansas, for the purpose of allowing that person to sell or offer for sale any property or service to any person on the list or to any person who resides at any address on the list.
- 3. That he/she and any entity on whose behalf the request is being submitted has been informed and is aware that to knowingly sell, give, or receive any list of names and addresses contained in or derived from public records, for the purpose of selling or offering for sale any property or service to persons on the list is a violation of state statute (K.S.A.45-230) and that any person violating the prohibition shall be liable for the payment of a civil penalty.

Signature		_
Printed Name & Title		_
Nate		