



Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

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Feb. 14, 2022

To: Sen. Elaine Bowers, chair, and members of the Senate Transparency and Ethics Committee

From: Emily Bradbury, executive director, Kansas Press Association

Re: Testimony in support of SB 386

Sen. Bowers and members of the Committee:

I am Emily Bradbury, executive director of the Kansas Press Association, which represents approximately 200 daily and non-daily newspapers across the state.

The association is writing in support of the language in SB 386.

Because there are no real statutory guidelines for what can be charged, newspaper reporters and private citizens have had to deal with exorbitant costs for gaining access to public records.

Some examples:

- When the Maize school district built a new high school, the parents of one student wanted to know why their daughter had been placed at one school over another. The cost to get what should have been a simple answer? Almost \$1,000 and a long delay. The parents' question likely could have been answered in a single page.
- A lead support professional serving those with developmental disabilities said it was imperative that public documents be affordable and readily available to her clients. Her clients don't have much money, so it's important that they not be "priced out" of transparency.
- A Topeka reporter asked for documents for inspections in Shawnee County conducted by the Kansas Board of Cosmetology. The cost: \$1,600, payable in advance.
- A Topeka reporter sought records from the Kansas Department of Agriculture for inspections of small animal breeders across the state. Cost for one year's worth of records: \$946, payable in advance.
- But the most egregious example came in 2020 when personnel firings in the city of Frontenac.

Both print and broadcast enterprises in the Pittsburg area sought emails and other records of conversations leading up to the decision of city council members to fire most of the city staff.

Frontenac's city attorney wanted to charge \$3,500 for the records, without any explanation of how he had actually arrived at that figure.

Following an investigation by the Kansas Attorney General's Office, Frontenac's city government was found to have charged unreasonable rates, had violated its own written policy and was sanctioned and ordered to undergo training on the Kansas Open Records Act.

This led to the formulation of guidelines by the AG's office, which are attached to my testimony. We propose that those guidelines become codified in the statutes of Kansas.

We urge the committee to codify these guidelines into SB 386. Thank you.

Emily Bradbury, Executive Director

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Guidance Document – Kansas Open Records Act (KORA) Fees for Cost of Staff Time
Policy No. 1

Approved:

Last Revised:

Index filed with the Secretary of State:

Copies sent to JCARR:

- I. Purpose
 - a. The purpose of this document is to provide guidance on the Office of the Attorney General’s current approach to exercising its discretion to determine what constitutes reasonable fees for staff time pursuant to the Kansas Open Records Act, as well as to provide a nonexclusive list of factors to be considered by the Office of the Attorney General in making the determination of reasonable fees for staff time when reviewing enforcement actions/complaints.
- II. Authority
 - a. The Kansas Open Records Act (KORA, K.S.A. 45-215 *et seq.*) states that it is the public policy of the state that public records shall be open for inspection by any person, unless otherwise provided by the KORA, and the KORA shall be liberally construed and applied to promote such policy. K.S.A. 45-216, and amendments thereto.
 - b. K.S.A. 2019 Supp. 45-219(c) provides, “[e]xcept as provided in subsection (f) or where fees for inspection or for copies of a public record are prescribed by statute, each public agency may prescribe reasonable fees for providing access to or furnishing copies of public records...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.” K.S.A. 2019 Supp. 45-219(c), and amendments thereto.
 - c. K.S.A. 2019 Supp. 45-219(c) also specifies that fees for access to or copies of public records, including the cost of staff time, of public agencies within:
 - i. the legislative branch of the state government shall be established in accordance with K.S.A. 46-1207a, and amendments thereto; K.S.A. 45-219(c)(3), and amendments thereto;
 - ii. the judicial branch of the state government shall be established in accordance with rules of the supreme court; K.S.A. 45-219(c)(4), and amendments thereto; and
 - iii. within the executive branch of the state government shall be established by the agency head, subject to appeal to the secretary

of administration whose decision shall be final. K.S.A. 45-219(c)(5), and amendments thereto.

- d. The attorney general is authorized by K.S.A. 45-215 *et seq.*, and amendments thereto, to enforce the KORA. In exercising enforcement discretion, the attorney general is from time to time called upon to determine whether fees charged by a public agency for the cost of staff time are “reasonable” within the meaning of K.S.A. 2019 Supp. 45-219(c), and amendments thereto.
 - e. The attorney general may issue a guidance document that states the agency’s current approach to, or interpretation of law; or that states the general statements of policy that describe how and when the agency will exercise discretionary functions. K.S.A. 2019 Supp. 77-438, and amendments thereto.
- III. Nothing in this guidance document should be construed as a requirement by the attorney general that a public agency charge a fee for staff time required to fulfill a records request. Public agencies are not required to charge any fee to fulfill a records request.
- IV. If charging a fee for staff time, a public agency should at all times charge the lowest possible fee and, in any event, should never charge a fee that exceeds the actual cost of the staff time expended. The attorney general considers fees for the cost of staff time that do not exceed the following amounts to be presumptively reasonable pursuant to K.S.A. 2019 Supp. 45-219(c), and amendments thereto, for all public agencies:
- a. For fees for access to or copies of public records of public agencies within the executive, legislative or judicial branches of state government, the amounts established by those entities as provided by K.S.A. 45-219(c)(3)-(5), and amendments thereto, respectively.
 - b. For fees for access to or copies of public records of all other public agencies, or by public agencies in the executive, legislative or judicial branches of state government if not otherwise established as provided by K.S.A. 45-219(c)(3)-(5), and amendments thereto, as appropriate, then an amount equal to or less than the following:
 - i. Clerical time charged at \$18 per hour;
 - ii. General attorney time charged at \$35 per hour;
 - iii. Supervisory attorney time charged at \$50 per hour (Supervisory attorney is an attorney empowered to conduct the final review of records for production);

- iv. Information Technology (IT) services charged at \$38 per hour;
 - v. Time for other classifications of employees charged based upon actual costs; and

- V. The amounts for the cost of staff time set forth in Paragraph IV will be considered presumptively reasonable, but that presumption may be overcome by the facts of an individual matter. In unusual situations, lesser amounts may be unreasonable or greater amounts may be reasonable. Additional factors to determine the reasonableness of fees for the costs of staff time include, but are not limited to, the following:
 - a. Format of the records (e.g., paper, electronic, microfilm);
 - b. Location(s) of and number of locations necessary to search for the records;
 - c. Access fees for records located in offsite storage;
 - d. The arrangement of the public agency filing system (chronologically, numerically, alphabetically);
 - e. The public agency's staffing resources;
 - f. Need to use an outside vendor to search for/retrieve the records;
 - g. The amount of time necessary to conduct a search for records;
 - h. The amount of time necessary to review and redact records;
 - i. Access and public agency personnel requirements for records maintained on databases;
 - j. Whether the presumptive cost for staff time exceeds the actual cost;
 - k. Whether the public agency provides without charge any or all of the staff time necessary to fulfill a records request; and
 - l. Whether the public agency employed best practices as described in paragraph VII.

- VI. A public agency may charge and require advance payment of a fee for providing access to or furnishing copies of public records. K.S.A. 45-218, and amendments thereto; K.S.A. 2019 Supp. 45-219(a), and amendments thereto. Such amount of advance payment may include a reasonable estimate of the actual cost of staff time, as described by this guidance document, to provide access to or furnish copies of public records *only if* the public agency, at the time of the request for advance payment, explains in reasonable detail to the requestor the calculations by which it arrived at the dollar amount of the request for advance payment.

- VII. The attorney general recommends the use of best practices to minimize the cost of staff time needed to respond to records requests. The attorney general considers public agency best practices to include, but not be limited to, the following:

- a. Working in good faith with, or attempting to work with, the requestor of records to narrow a broad request, make more specific a general request, or refocus a request to more easily align with the filing system of the public agency in order to reduce or minimize the cost of staff time necessary to fulfill the request;
- b. Providing, at no charge, one (1) record request per requestor in a twelve (12) month period that can be provided with less than one (1) hour of staff time;
- c. Using in good faith the lowest-cost category of staff reasonably necessary to provide access to or furnish copies of public records; and
- d. Charging a lesser rate or cost consistent with an existing policy, procedure or rate for calculating cost of staff time that differs from this guidance document in order to minimize cost for the requestor.

Derek Schmidt
Kansas Attorney General