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Testimony in Opposition to Provisions of Senate Bill 360

**Presented to the Senate Judiciary Committee
By Assistant Attorney General Cheryl Whelan
Director of Open Government Training and Compliance**

February 13, 2018

Chairman Wilborn and Members of the Committee:

Thank you for the opportunity to testify in opposition to certain provisions of Senate Bill 360. This testimony concerns the two proposed amendments to K.S.A. 2017 Supp. 45-219(a).

First, SB 360 would amend K.S.A. 2017 Supp. 45-219(a) so that a public agency may not require a written request for copies of public records. Therefore, a request for copies of public records could be verbal. K.S.A. 2017 Supp. 45-219(a) currently allows a public agency to require a written request for copies of public records.

A written request for copies of public records benefits both the public who requests records and the public agencies which receive requests for records. A written request for records documents the records that were requested, provides a common understanding of the records that were requested, and documents the date the records were requested. If a dispute arises, a written request for records provides proof to both the requester and the public agency as to the documents requested and the date of the request.

The removal of the authority of a public agency to require a written request for copies of records creates several problems. First, such a requirement will require a public agency to determine whether comments made during every phone call or in person conversation constitute a request for records. This would be unduly burdensome on the public agency and likely result in confusion or misunderstanding. Second, should a dispute arise, a requester will not be able to provide proof that a request for certain records was made on a specific date. Third, because of the first two concerns, this step would tend to undermine the progress made in recent years toward making the KORA more enforceable and making the handling of public records more professional. Finally, allowing verbal requests for records will leave a public agency completely vulnerable and exposed to complaints and litigation that cannot be adequately defended because the date and actual language of the request will not be in the requester's own words or memorialized appropriately. Only the lawyers will benefit.

Adopting this proposed amendment to K.S.A. 2017 Supp. 45-219(a) will result in an increase in the number of inquiries, complaints and litigation involving open records.

The second proposed amendment to K.S.A. 2017 Supp. 45-291(a) would require a public agency to make copies of radio recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items if duplication equipment is available. "Public records maintained on computer facilities" would be added to the list of items that must be copied if duplication equipment is available or if such items were shown or played to a public meeting of the governing body.

The phrase "if duplication equipment is available" is extremely vague. Without clarification, this provision will result in an increase in the number of inquiries, complaints and possibly litigation over the meaning of this phrase. Additionally, these types of records are subject to mandatory and discretionary exemptions to disclosure as described in K.S.A. 2017 Supp. 45-221(a). The equipment required to redact may not be available to a public agency and, in particular, to a smaller public agency. Finally, requiring public agencies to produce copies will unduly burden smaller public agencies.

We remain neutral on the remaining provisions of SB 360.

Thank you for your consideration of these concerns.