



# MEMORANDUM

## Legislative Post Audit

800 SW Jackson Street

Topeka, Kansas 66612

Phone: (785) 296-3792

Web: [www.kslpa.org](http://www.kslpa.org)

To: Senate Transparency and Ethics Committee  
From: Justin Stowe, Legislative Post Auditor  
Date: January 27, 2021  
Subject: Testimony Supporting Senate Bill 17

**I appreciate the opportunity to testify in support of Senate Bill 17.** This bill was introduced by the Legislative Post Audit Committee at our request. It has also been introduced and heard in the House Judiciary Committee as House Bill 2049.

### Background

The Kansas Open Records Act (K.S.A. 45-215) says information held or maintained by agencies is an open record. The statute also sets out the process for persons or entities outside the agency to access public data or get copies. The law allows agencies to charge for that data in some circumstances.

Legislative Post Audit staff evaluate government programs in other agencies under the authority of the Legislative Post Audit Act (K.S.A. 46-1101 et. seq.). The Post Audit Act gives us clear access to files, records, and documents of state and local governments when conducting an audit. This access includes confidential data and information that might not be subject to disclosure under an open records act request.

Occasionally, agencies question whether they can charge Legislative Post Audit for records requested during an audit under the Open Records Act.

### Bill provisions

**Senate Bill 17 prohibit agencies from charging LPA for records requested as part of an audit.** It adds the following provision to the Kansas Open Records Act (KORA):

*No public agency shall charge a fee for access to or copies of records if the request for such access to or copies of such records is made by the post auditor or an employee of the legislative division of post audit for the purpose of conducting an audit pursuant to the legislative post audit act, K.S.A. 46-1101, et seq., and amendments thereto, or any other law.*

**This bill helps ensure KORA aligns with the Post Audit Act and our policy.**

- We are not members of the press or the public. We are a statutorily created legislative oversight agency charged with evaluating state and local government at the direction of the bi-partisan legislative committee.
- Like 19 other state audit offices we contacted, we don't pay for agency data or

the staff time required to prepare it for the purpose of an audit as a matter of policy.

- That's because we request data under the authority of the Post Audit Act, not KORA. This is clear because we often request and receive confidential data to do our audit work. That data can't be provided under KORA but must be provided under the Post Audit Act.
- We don't think this bill expands our current authority, nor does it diminish or limit KORA. It simply helps clarify that audit requests for data are not subject to KORA fee requirements.

**This bill would help resolve some confusion between us and audited agencies and would help ensure an audit isn't blocked in the future.**

- SB 17 would save us and the audited agencies time trying to reconcile our statutory authority under the Post Audit Act with fee provisions in KORA.
- SB 17 only applies to data requests made for the purpose of an audit. If we requested data for any other reason, we would pay under the KORA fee requirements like any other agency.
- SB 17 helps ensure that fees can't be used to block our statutory access to agency records during an audit. Our agency doesn't set aside funds to pay agencies for data (for the reasons discussed above). Consequently, if KORA fees for data could be applied to our audit work, they could effectively be used to block an audit.