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STATE OF KANSAS

Testimony on SB386 (Oral Neutral)

Senate Committee on Transparency and Ethics
Monday, February 14, 2022

Chairwoman Bowers and members of the Committee:

Thank you for the opportunity to provide testimony on SB386.

The Secretary of State receives thousands of Kansas Open Records Act (KORA) requests each year. The overwhelming majority of these requests are for voter data or business services records. These requests are received by a standardized form for a fixed fee, calculated to correspond to the amount of staff time to create and produce the record.

Our agency also receives approximately 100 individualized KORA requests per year, most of which pertain to election issues, from individuals, organizations, or journalists. Since 2019, our office has only charged twice for its own staff time – both of which were to law firms who were using the KORA process to avoid the cost of discovery. Most requests are submitted with a request to waive fees for acting in the public interest.

Our office wishes to present the following points for consideration:

1. SB386 should clarify that, unless it is mandated by law, an agency has no duty to create or maintain a function that can create specific formatted reports from databases. This issue is currently being litigated in Kansas.
2. SB386 should clarify that if an agency that does not have a requested record, but in acting under KSA 45-218(c) locates the record in the possession of a non-state government entity, that passing on the entity's production fee to the requestor is not considered a fee subject to KORA. For example, if a vendor agrees to provide the record but wants payment from the agency first, and our office then requests payment of that precise amount from the fully informed requestor. This issue is currently be litigated in Kansas.
3. SB386 should clarify when legal advice or review is a valid KORA charge. K.S.A. 45-221 outlines 54 KORA exemptions, and hundreds of others are sprinkled throughout the statutory code – some of which include punitive provisions if the information is made public. Often, legal advice is necessary to determine whether an exemption applies to a record, or if certain portions need to be redacted. This issue has been litigated in other states.

Thank you for your time and consideration.

Respectfully submitted,

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