

Open Government Quiz: Answer Key

The questions were drawn from the following resources: publications by the Attorney General's Office, including the [A Citizen's Guide to Open Government](#), selected Attorney General Opinions (e.g. [Att'y Gen. Op. 2004-34](#)), and [selected legislative testimony](#); selected statutes contained in the Kansas Open Meetings Act (KOMA) ([K.S.A. 75-4317](#); [K.S.A. 75-4317a](#); [K.S.A. 75-4318](#); [K.S.A. 75-4319](#); [K.S.A. 75-4320](#); and [K.S.A. 75-4320a](#)); and selected statutes contained in the Kansas Open Records Act (KORA) ([K.S.A. 45-216](#); [K.S.A. 45-217](#); [K.S.A. 45-218](#); [K.S.A. 45-219](#); [K.S.A. 45-220](#); [K.S.A. 45-221](#); [K.S.A. 45-222](#); and [K.S.A. 45-226](#)).

1. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public.

True

False

ANSWER: True. See [K.S.A. 75-4317\(a\)](#).

2. Which of the following groups must comply with the Kansas Open Meetings Act (KOMA) when they hold meetings?
 - a. school boards
 - b. boards of directors of a private corporation
 - c. boards of directors of a rural water district
 - d. public agency staff
 - e. district court judges
 - f. the legislature
 - g. Prisoner review board when conducting parole hearings or parole violation hearings held at a correctional institution

ANSWER: (a) and (c). All legislative and administrative bodies, and agencies of the state, and political and taxing subdivisions thereof, which receive or expend and are supported in whole or in part by public funds are subject to KOMA. See [K.S.A. 75-4318\(a\)](#). Wholly private entities are not subject to KOMA because they don't fit that definition. Moreover, [K.S.A. 75-4318\(g\)\(1\)-\(4\)](#) specifies when KOMA doesn't apply: "The provisions of the open meetings law shall not apply: (1) To any administrative body that is authorized by law to exercise quasi-judicial functions when such body is deliberating matters relating to a decision involving such quasi-judicial functions; (2) to the prisoner review board when conducting parole hearings or parole violation hearings held at a correctional institution; (3) to any impeachment inquiry or other impeachment matter referred to any committee of the house of representatives prior to the report of such committee to the full house of representatives; and (4) if otherwise provided by state or federal law or by rules of the Kansas senate or house of representatives."

3. Non-profit organizations are always subject to the KOMA.

True

False

ANSWER: False. However, a non-profit organization may be subject to KOMA if the non-profit: (a) receives or expends public funds; (b) is subject to control of governmental unit(s); and (c) acts as a governmental agency in providing services or has independent authority to make governmental decisions. [Att'y Gen. Op. 2004-34](#); see FN. 4.

4. When a group that must comply with the KOMA holds its meetings, it is required to:
 - a. conduct the meeting in a way that the public may observe or listen to the proceedings
 - b. notify any person who has requested notice of the date of the meeting
 - c. notify the general public of the date of the meeting

ANSWER: (a) and (b). The Attorney General has defined open as to mean “that the meeting must be conducted in a way that the public may observe or listen to the proceedings.” [A Citizen’s Guide to Open Government](#). While [K.S.A. 75-4318](#)(b) requires notice to anyone who requests it, the general public is not entitled to notice under KOMA.

5. When a group is the kind that must comply with the KOMA and holds a meeting, the meeting must be open to the public if:
 - a. There is a gathering in person, by telephone, or any other medium for interactive communication.
 - b. The gathering includes a majority of the members of a group subject to KOMA.
 - c. The members of the group discuss the business or affairs of the group’s public body or agency.

ANSWER: (a), (b), and (c). [K.S.A. 45-217a](#).

6. A communication is an “interactive communication” and subject to KOMA if it:
 - a. is a two-way communication
 - b. involves a majority of the membership of the public body
 - c. shares a common topic of discussion concerning the business or affairs of the public body or agency,
 - d. is intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the public body or agency

ANSWER: (a), (b), (c) and (d). [K.S.A. 75-4318](#)(f). An interactive communication is a “two-way communication,” and applies to communications between “go-betweens.” [A Citizen’s Guide to Open Government](#).

7. Which of the following may be an “interactive communication” as defined by KOMA?
 - a. An email sent from City Commissioner A to City Commissioner B and City Commissioner C.
 - b. A reply to that email sent from City Commissioner B to City Commissioner A.
 - c. An email sent from a City Commissioner 1 to the other four members of a city commission
 - d. An email reply sent from one of the four other members to City Commissioner 1
 - e. A “reply all” email sent from one of the four other members to all of the members

- f. An email conversation between all the members of a city commission about when and where the next meeting will take place

ANSWER: (b) and (e). (a) is not interactive because it is not a two-way communication. (b) is interactive and involves a majority of the members, so as long as the emails share a common topic of discussion and are intended to reach consensus about that topic, City Commissioner B has violated KOMA. Similarly, the “reply all” scenario set forth in choice (e) is the classic scenario where a KOMA violation can occur because it clearly involves the majority (i.e., all) of the members of the public body. [A Citizen’s Guide to Open Government](#). Finally, communications “to determine a mutually acceptable meeting time so notice of that meeting may be provided” are permissible. [A Citizen’s Guide to Open Government](#).

8. In order to enter into an executive meeting that is closed to the public, a public body must do which of the following?
 - a. make a statement describing the subjects to be discussed during the closed or executive meeting
 - b. cite a justification listed in KOMA for closing the meeting
 - c. announce the time and place at which the open meeting shall resume

ANSWER: (a), (b) and (c). [2017 K.S.A. 75-4319\(a\)\(1\)-\(3\)](#).

9. Under the KOMA, which of the following may a public body cite as a justification for entering into a close or executive meeting?
 - a. the need to discuss personnel matters of nonelected personnel
 - b. the need for consultation with an attorney for the public body or agency which would be deemed privileged in the attorney-client relationship
 - c. the need to discuss employer-employee negotiations whether or not in consultation with the representative or representatives of the public body or agency
 - d. the need to discuss data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships
 - e. the need to discuss matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person
 - f. the need for the preliminary discussion of the acquisition of real property

ANSWER: (a), (b) (c), (d), (e), and (f). [2017 K.S.A. 75-4319\(b\)](#).

10. Although a public body may reach consensus in executive session, binding action must occur in open session.

True

False

ANSWER: True. See [A Citizen’s Guide to Open Government](#). KOMA prohibits “binding action” by “secret ballot.” [K.S.A. 75-4318\(a\)](#).

11. Which of the following remedies are available if a person who believes a public body has violated the KOMA?
- a. File a complaint with the county or district attorney in the jurisdiction where the public agency is located
 - b. File a complaint with the Attorney General's Office
 - c. File a lawsuit in the jurisdiction where the public agency is located
 - d. Convince a county attorney, district attorney, or attorney general to bring a civil action in the jurisdiction where the public agency is located

ANSWER: (a), (b), (c) and (d). County attorneys, district attorneys, or the attorney general can enforce KOMA violations under [K.S.A. 75-4320](#). The Attorney General's Office complaint [form is available on its website](#). Private citizens have a right to file a lawsuit under [K.S.A. 45-4320a](#) against the public body "to enforce the purposes" of the Act.

12. If members of a public body made a binding decision at a meeting that violates KOMA, the state Attorney General has the authority to bring an action within 21 days in the district court in the county in which the KOMA violation occurred to void the public body's decision.

True

False

ANSWER: True. See [K.S.A. 75-4320](#).

13. It is declared to be the public policy of the state of Kansas that public records shall be open for inspection by any person unless otherwise provided by the Kansas Open Records Act (KORA), and the KORA shall be liberally construed and applied to promote such policy.

True

False

ANSWER: True. See [K.S.A. 45-216\(a\)](#).

14. Records of which of the following are subject to the Kansas Open Records Act (KORA)?
- a. any public agency
 - b. any instrumentality or subdivision of any public agency
 - c. any other entity receiving or expending and supported in whole or in part by the public funds appropriated by the state or by public funds of any political or taxing subdivision of the state
 - d. any entity solely by reason of payment from public funds for property, goods or services of such entity
 - e. any municipal judge, judge of the district court, judge of the court of appeals or justice of the supreme court
 - f. the legislature
 - g. the executive branch (i.e., the governor's office)

ANSWER: (a), (b), (c), (f) and (g). See [K.S.A. 45-217\(f\)\(1\)](#) and [\(2\)\(A\)](#) and [\(B\)](#). However, records “which are made, maintained or kept by an individual who is a member of the legislature or of the governing body of any political or taxing subdivision of the state” are not public records under the KORA. [K.S.A. 45-217\(g\)\(3\)\(B\)](#). This provides is intended to “exclude records kept by individual members but not records of the governing bodies they serve. It excuses individual members of such governing bodies from the burden of producing records that they maintain personally in their performance of official duties, but the records of the governing bodies they serve are still considered public records and thus must be made available. The person seeking the records of the governing body must get them from the central office rather than from the individual.” Ted Frederickson, *Letting the Sunshine In*, 33 Kan. L. Rev. 205, 221 (Winter 1985).

15. Which of the following is a “public record” subject to the KORA?

- a. recorded information, regardless of form, characteristics or location, which is made, maintained, kept by, or in the possession of any public agency
- b. recorded information, regardless of form, characteristics or location, which is made, maintained, or kept by 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
- c. records which are made, maintained or kept by an individual who is a member of the legislature or of the governing body of any political or taxing subdivision of the state

ANSWER: (a) and (b). See [K.S.A. 45-217\(g\)](#).

16. The governing body of every public agency in Kansas which maintains public records shall designate a local freedom of information officer.

True

False

ANSWER: True. See [K.S.A. 45-226](#).

17. When a public agency receives a request under the KORA, which of the following is the public agency required to do?

- a. Act on the request as soon as possible, but not later than the end of the third business day following the date that the request is received.
- b. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection.
- c. If the request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for denial citing the specific provision of law under which access is denied.

ANSWER: (a), (b), and (c). See [K.S.A. 45-218\(d\)](#).

18. When a public agency charges fees for copying records requested under the KORA, the fees shall not exceed the actual cost of furnishing copies, including the cost of staff time required to make the information available.

True

False

ANSWER: True. See [K.S.A. 45-219\(c\)](#).

19. Any person requesting records from an executive office (the Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer and Insurance Commissioner) may appeal the reasonableness of the fees charged for providing access to or furnishing copies of such records to the secretary of administration whose decision shall be final.

True

False

ANSWER: True. See [K.S.A. 45-219\(c\)\(5\)](#).

20. A public agency may require a person to write a request for public records on a particular form provided by the agency.

True

False

ANSWER: False. [K.S.A. 45-220\(b\)](#).

21. Which of the following reasons may a public agency assert for refusing to disclose public records?

- a. records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court
- b. 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
- c. criminal investigation records
- d. notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting
- e. public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy

ANSWER: (a), (b), (c), (d), and (e). See [K.S.A. 45-221\(a\)\(1\), \(4\), \(10\), \(20\), and \(30\)](#).

22. If a public agency is asked for a record containing material not subject to disclosure, the agency shall separate or delete such material and make available to the requestor the material in the public record which is subject to disclosure.

True

False

ANSWER: True. See [K.S.A. 45-221\(d\)](#).

23. The KORA defines public records in a way that includes email messages that are about a public agency's official business and that are sent and received by public employees using their private email accounts.

True

False

ANSWER: True. The definition of "public records" set forth in [K.S.A. 45-217](#) was amended in 2016 to apply the law to "private email accounts of state employees." [Legislative testimony](#), Attorney General Derrick Schmidt, February 2, 2016, SB 361.

24. Which of the following remedies are available to a person who believes a public agency has violated the KORA?

- a. file a complaint with the county or district attorney in the jurisdiction where the public agency is located
- b. file a complaint with the Attorney General's Office
- c. file a lawsuit in the jurisdiction where the public agency is located
- d. convince a county attorney, district attorney, or attorney general to bring a civil action in the jurisdiction where the public agency is located

ANSWER: (a), (b), (c), and (d). See [K.S.A. 45-222](#). "Any person" may file a lawsuit under the KORA.

25. Which of the following must be proved in order to recover attorney fees in a civil lawsuit filed under the KORA?

- a. The agency's denial of access to the public record was not in good faith
- b. The agency's denial of access to the public record was without a reasonable basis in fact or law

ANSWER: (a) and (b). See [K.S.A. 45-222\(d\)](#).

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