Board Retreat

Wednesday, June 17, 2026 4:00 PM
Ambler Board Room, 1801 N. Cottonwood, Iola, KS 66749

1. **Call to order and establish quorum**
2. **Approval of Agenda**
3. **Data Driven Decision Making Training**
4. **KORA Training**
5. **Adjournment**

Just a Flesh Wound: Developing a Culture of Data-Driven Decision-Making

June 17, 2026

Dr. Aidan Dunleavy

AVP of Institutional Research & Effectiveness
Butler Community College

Session Objectives

- Identify benefits of data-driven decision-making
- Evaluate the components of a data-driven decision-making culture
- Adapt session material to support individual institutional effectiveness
- Share success stories of data-driven decision-making

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Agenda

- Introduction to Data-Driven Decision-Making
- Components of a Data-Driven Decision-Making Culture
- Case study examples
- Select Allen CC data

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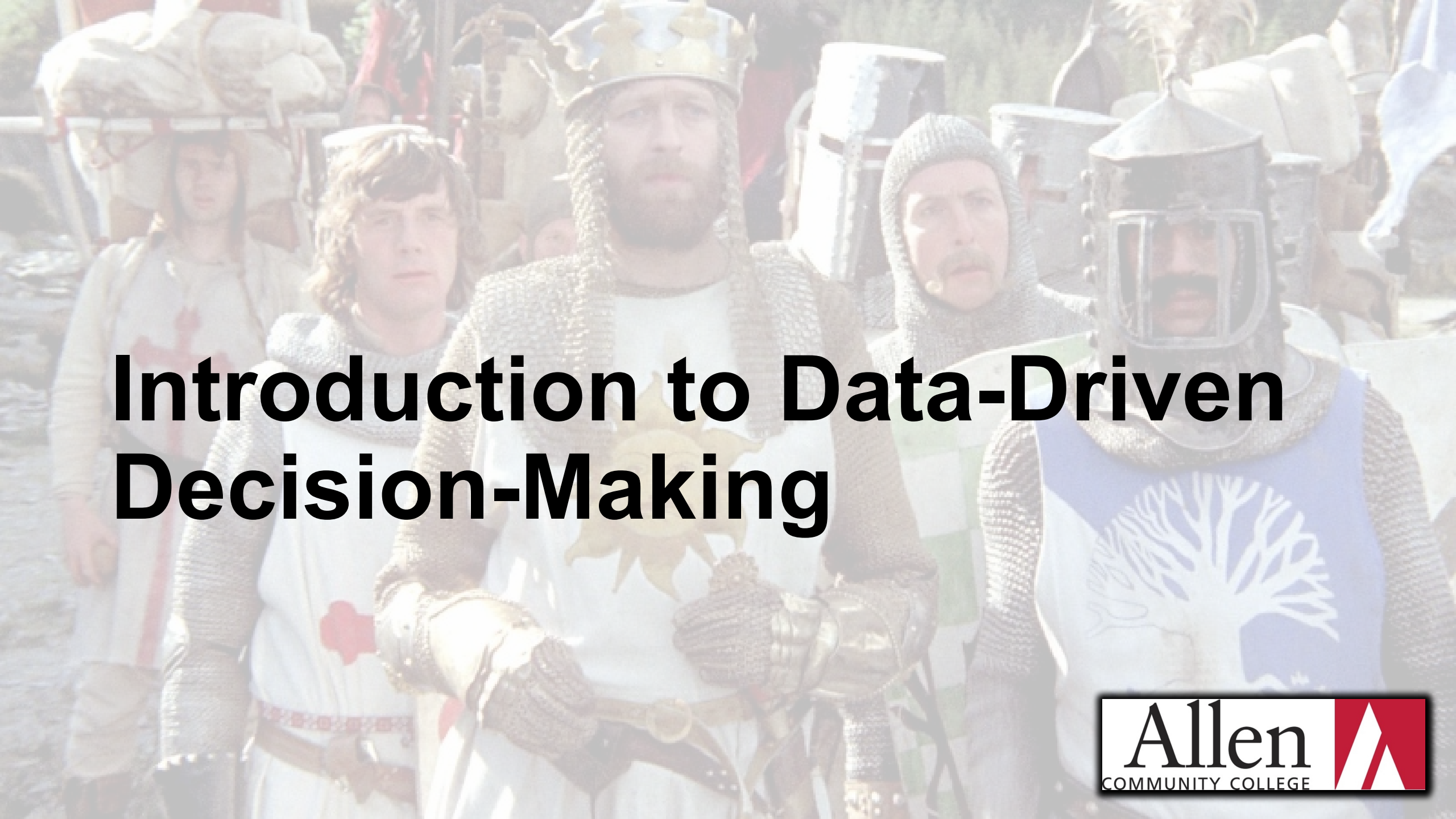

Introduction to Data-Driven Decision-Making

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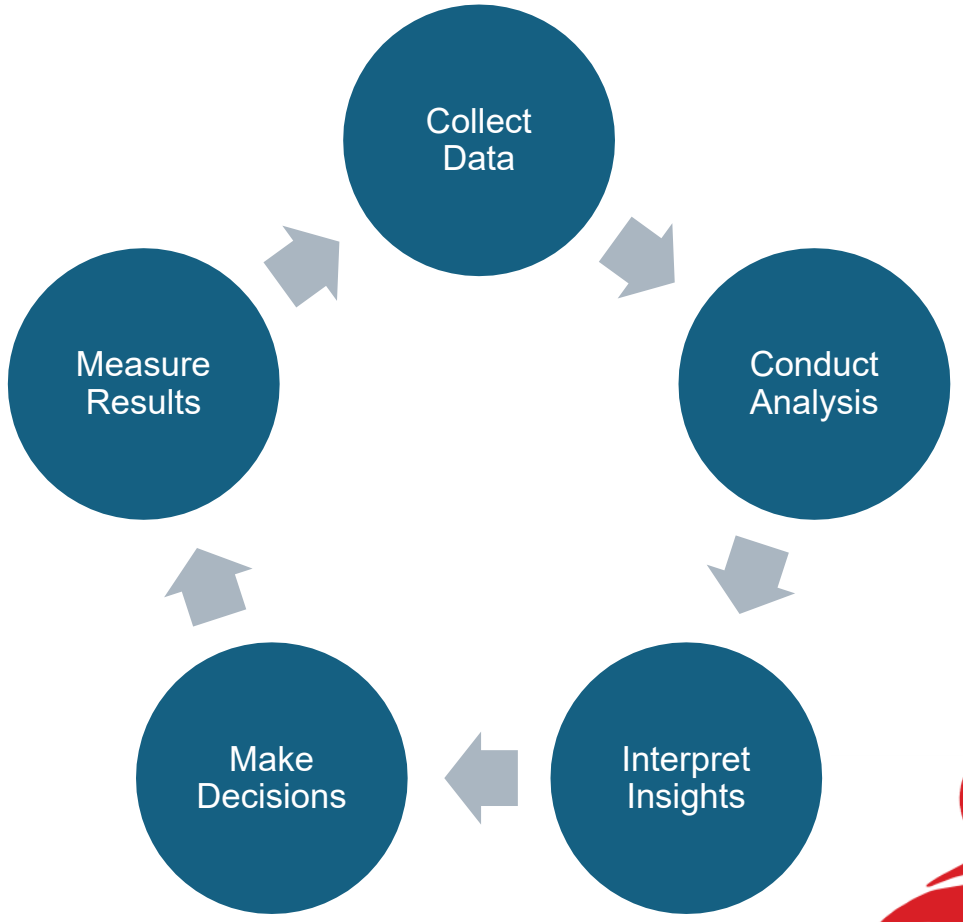
What is Data-Driven Decision-Making?

- Using data, analytics, and insights to guide organizational decisions
  - Avoids reliance on intuition and experience
- Process generally includes:
  - Data collection, analysis, and interpretation; decision-making; and outcome measurement



Benefits of Data-Driven Decision-Making

- Benefits of a data-driven decision-making culture may include:
  - Greater accuracy and objectivity
  - Reduce risk
  - Develop repeatable processes
  - Identify trends and emerging opportunities
  - Generate efficiencies and increased productivity
  - Promote better outcomes

Components of a Data-Driven Decision-Making Culture

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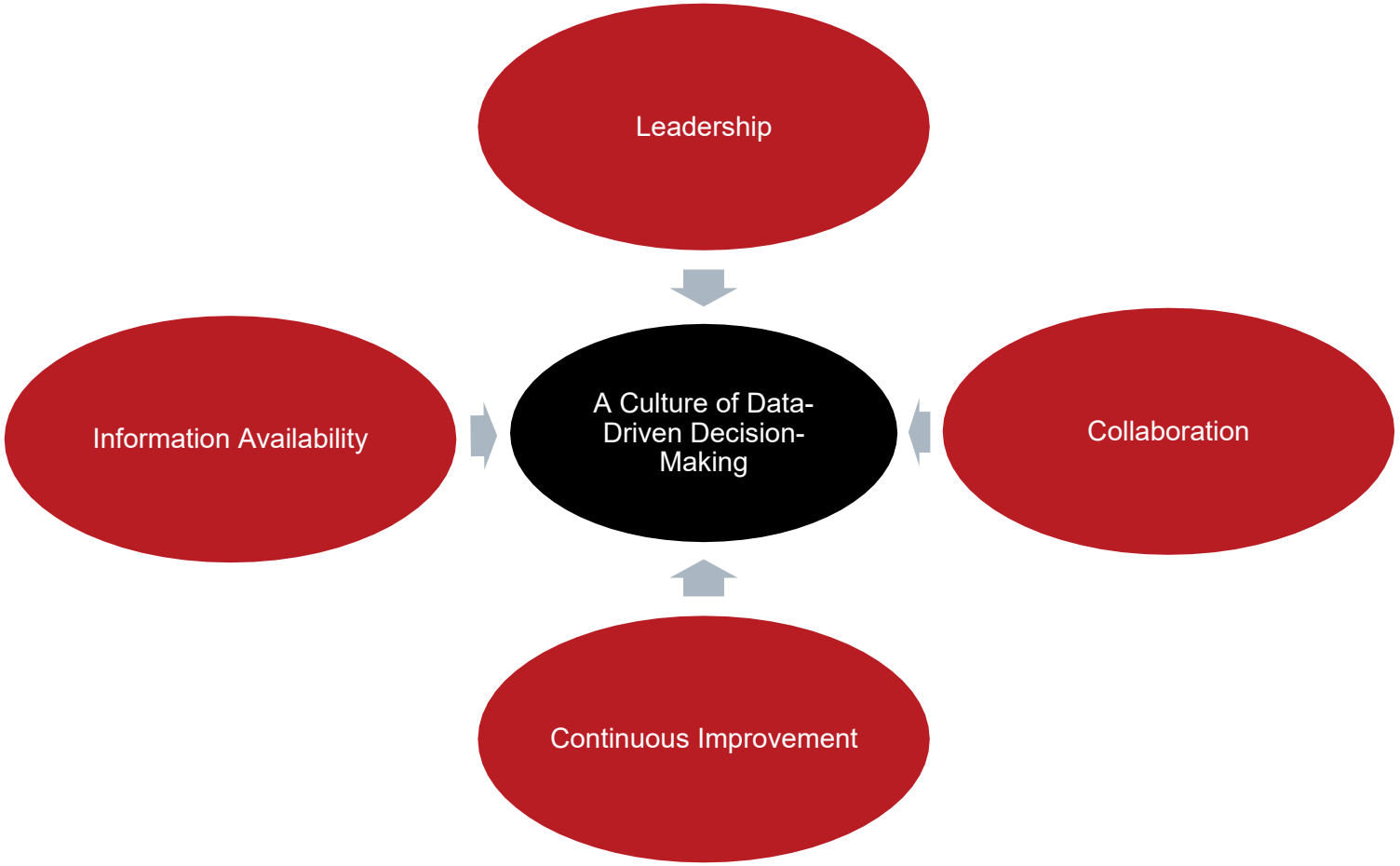
Key Components of a Data-Driven Decision-Making Culture



Leadership

- Sets organizational tone
  - Board of Trustees and Senior leadership support necessary
- Sets process expectations
  - What are the goals (e.g., increase graduation rate)?
  - What data/metrics should be considered?
  - Who should be involved?
- Leaders at all levels play a part
  - Includes informal leaders
- Find balance
  - Too little analysis – signals that data is unimportant
  - Too much analysis – causes unnecessary work and delays

Information Availability

- General attitude
  - Democratization of information
- Data
  - Internal and external
  - Longitudinal
  - Comparative
  - Benchmarking
  - Peer Groups
- Source of data / analysis
  - Centralized / directed (e.g., institutional research) or varied
- Frequency
- Publishing
  - Push (e.g., regular board reports, emails, and town halls)
    - Promotes access and consistency
  - Pull (e.g., interactive dashboards)
    - Promotes flexibility and exploration
- Intent
  - Awareness or action?

Collaboration

- Determine common goals
- Establish roles and timelines
- Leverage key institutional stakeholders
  - IR, IT, functional experts and "super-users"
- Seek input from colleagues and peer institutions

Continuous Improvement

- Treat every review cycle as an opportunity for improvement
- Improvement is the goal – not perfection
- Embrace an iterative process

Case Study 1

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Case Study 1: Course Staffing & Scheduling

- The Request
  - Additional and/or replacement faculty
- Context
  - Funding constraints
  - Faculty turnover
  - Impetus for efficiency
- Our Charge
  - Validate the need for new faculty

Case Study 1: Course Staffing & Scheduling

Analysis: Staffing

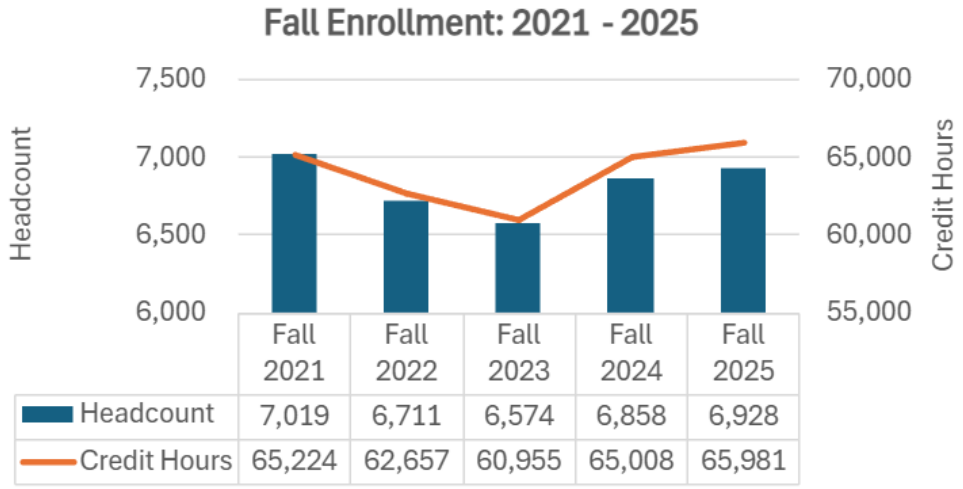
- Faculty cost
- Faculty load and productivity
  - Student credit hours (SCH)
  - Release time
  - Overload
- *Tool: Argos reporting*

Analysis: Schedule

- Section sizes
- Course modality
- Course locations
- *Tool: Ad Astra scheduling*

Case Study 1: Course Staffing & Scheduling

- Question
  - Do we need more faculty or can we optimize scheduling instead?



Butler CC: Class Section Enrollment by Class Size					
Section Size	**Fall '21**	**Fall '22**	**Fall '23**	**Fall '24**	**Fall '25**
			Section Count		
1-5	296	258	297	175	151
6-10	439	490	390	349	271
11-15	432	405	421	388	283
16-20	350	408	409	383	350
20+	395	370	361	479	537
	1,912	**1,931**	**1,878**	**1,774**	**1,592**
			Section Percentage of Total		
1-5	15.5	13.4	15.8	9.9	9.5
6-10	23.0	25.4	20.8	19.7	17.0
11-15	22.6	21.0	22.4	21.9	17.8
16-20	18.3	21.1	21.8	21.6	22.0
20+	20.7	19.2	19.2	27.0	33.7

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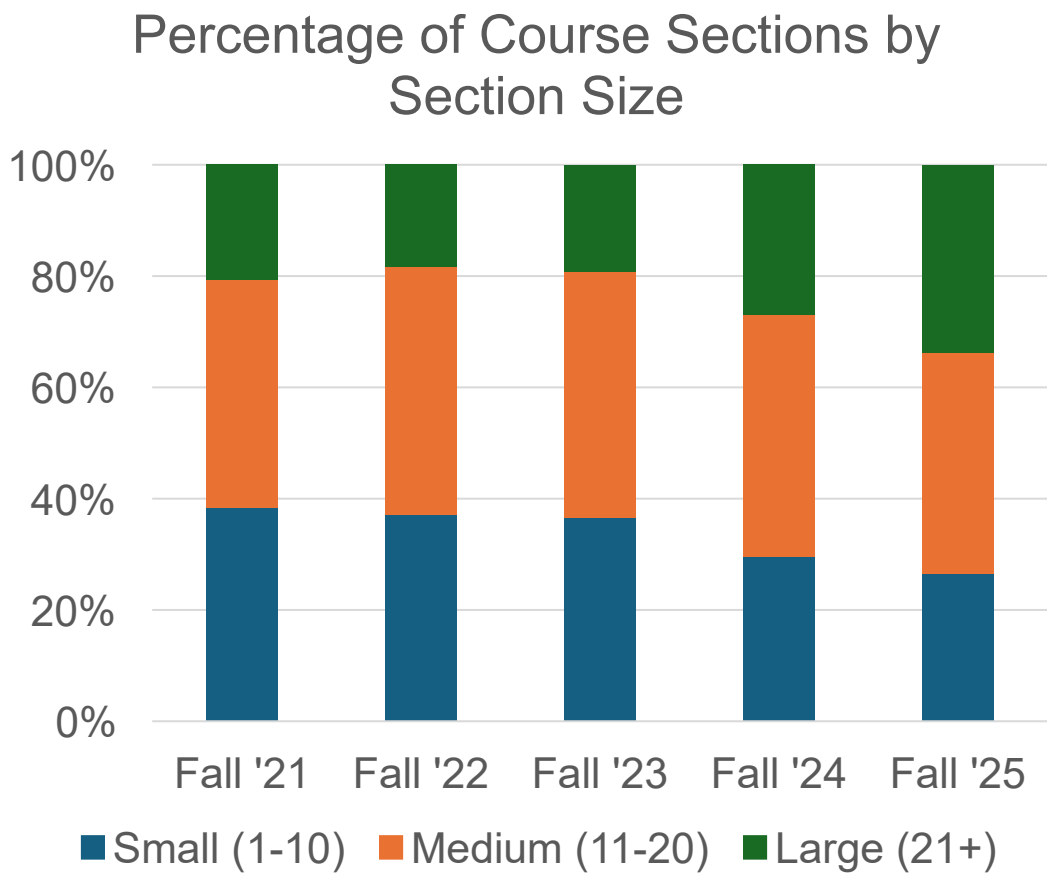
Case Study 1: Course Staffing & Scheduling

- Answer
  - We can optimize scheduling!
- Results
  - More efficient class size
    - Small (1-10): 39% to 27%
    - Large (21+): 21% to 34%
  - Fewer unfilled sections
  - More thoughtful staffing
  - Cost savings



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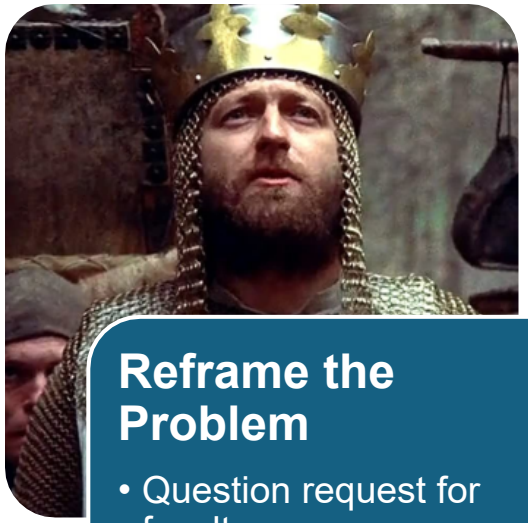
Case Study 1: Course Staffing & Scheduling

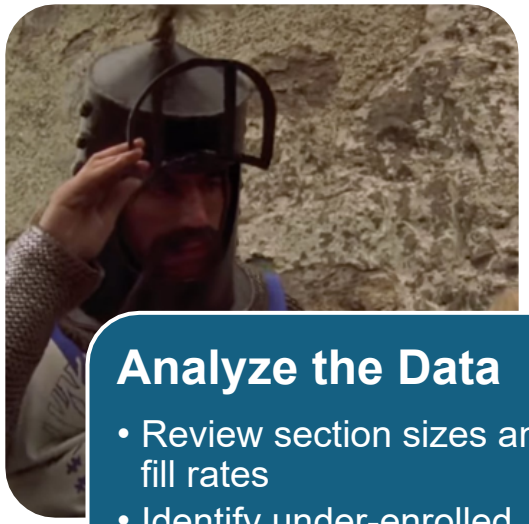
- Unanticipated Benefits
  - Awareness of unnecessary course offerings
  - Highlighting bottlenecks in degree-completion pathways

Case Study 1: Course Staffing & Scheduling



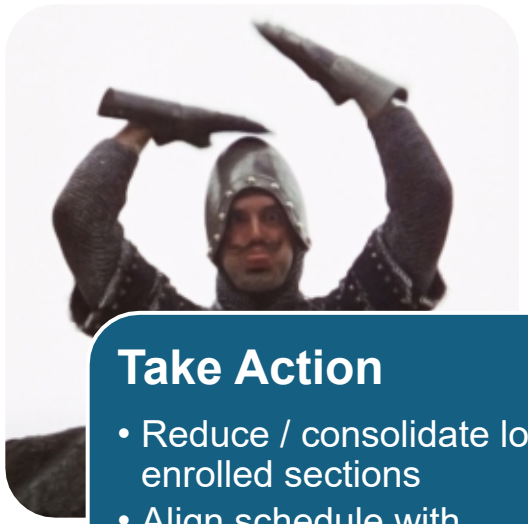
Reframe the Problem

- Question request for faculty
- Shift from “add faculty” to “are we efficient”
- Consider scheduling



Analyze the Data

- Review section sizes and fill rates
- Identify under-enrolled sections
- Longitudinal view by course size and modality



Take Action

- Reduce / consolidate low-enrolled sections
- Align schedule with student demand
- Prioritize filling sections
- Delay or avoid hiring

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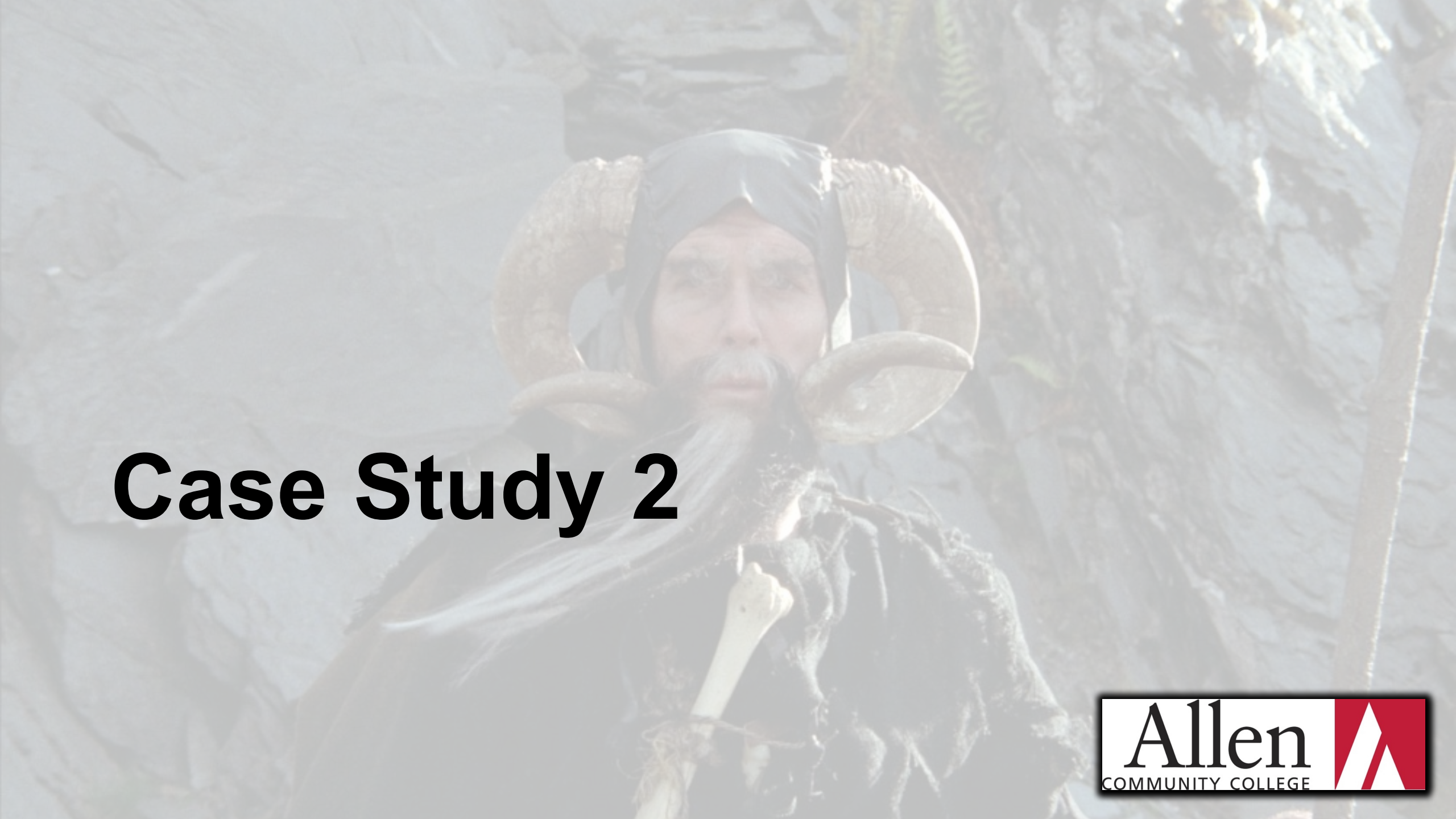

Case Study 2

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Case Study 2: New Program Additions

- The Request
  - Add a new academic program
- Context
  - Some additions have been successful, some have not
  - Inconsistent process
  - Incomplete analysis
- Our Charge
  - Maximize chances of new program success
  - Optimize decision-making process

Case Study 2: Unsuccessful Example

- 3 programs added in a division in AY 2024
- All three were phased out starting in AY 2026
- Enrollment struggled
  - Highest # of declared majors in a year was 13
- Some general reasons for program concerns
  - Enrollment
  - Retention
  - Completion
  - Cost

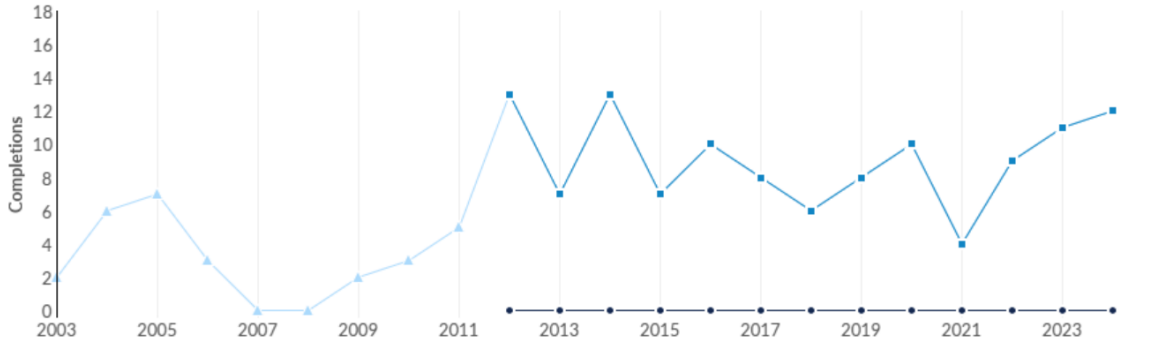
Case Study 2: Analysis - Program

- Competitors
- Program pro-form
  - Enrollment (revenue); faculty and other costs
- *Source: Lightcast*

Completions by Institution

Institution	Completions (2024)	Growth % YOY (2024)	Market Share (2024)	IPEDS Tuition & Fees (2023)	Completions Trend (2020-2024)
⊞ Kansas State University	12	100.0%	100.0%	$10,942	

Regional Trends



Case Study 2: Analysis - Occupations

- Define related occupations
- Projected job growth, median wages, typical education needed
- Key employers
- *Source: Kansas Occupational Projections, Lightcast*

Occupational Code	Occupational Title	Employment		Change in Employment		Openings due to			Total[1]	Wages[2]	Ed
		Base Year 2022	Projected Year 2032	Numerical	Percent: Annual	Exits: Annual	Transfers: Annual	Numerical Change: Annual	Openings: Annual	Annual Median	Typical Education Needed for Entry
00-0000	**Total, All Occupations**	**1,498,43**	**1,547,63**	**49,19**	**0.3**	**73,92**	**93,16**	**4,91**	**172,00**	**$46,8**	
27-0000	**Arts, Design, Entertainment, Sports, and Media Occupations**	**22,562**	**23,104**	**542**	**0.2%**	**1,032**	**1,352**	**54**	**2,438**	**$46,590**	
27-1014	Special Effects Artists and Animators	***	***	***	***	***	***	***	***	$83,210	Bachelor's degree
27-1021	Commercial and Industrial Designers	119	127	8	0.7%	3	6	1	10	$100,010	Bachelor's degree
27-1024	Graphic Designers	2,573	2,581	8	0.0%	74	132	1	207	$49,820	Bachelor's degree
27-1029	Designers, All Other	***	***	***	***	***	***	***	***	***	Bachelor's degree
27-2012	Producers and Directors	434	420	-14	-0.3%	12	23	-1	34	$54,750	Bachelor's degree
27-4031	Camera Operators, Television, Video, and Film	319	291	-28	-0.9%	8	18	-3	23	$46,490	Bachelor's degree
27-4032	Film and Video Editors	78	82	4	0.5%	2	5	0	7	$41,920	Bachelor's degree
27-4099	Media and Communication Equipment Workers, All Other	***	***	***	***	***	***	***	***	***	High school diploma or equivalent

Case Study 2: Lessons Learned

- Need clear approval chain, ex.:
  - Faculty Council → Deans Cabinet → Academic BOT → KBOR/HLC
- Alignment with KBOR
  - Ensure compliance
  - Maximize funding

- Need market analysis
  - Define need / opportunity
- Need cost-benefit analysis
  - Define faculty and capital needs
  - Estimate enrollment / revenue
- Consider current portfolio of programs to avoid
  - Unnecessary / similar programs
  - Program cannibalization

Select Allen CC Data

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Tuition Analysis

- In-district and out-district tuition are close to KS CC averages
- Non-resident tuition and international tuition are materially lower than KS CC averages

Allen CC: Tuition Rate Trends by Residency Status

Status	2022	2023	2024	2025	2026	Chng	Rank[1]
			Allen CC ($)				
In-Dist	60	61	75	75	75	0%	11
Out-Dist	60	61	85	85	85	0%	8
Non-Res	60	61	95	95	100	5%	11
Internat	60	61	105	105	115	10%	16
			KS CC average ($)				
In-Dist	64	66	68	70	72	3%	
Out-Dist	70	73	77	79	81	3%	
Non-Res	102	105	110	111	115	4%	
Internat	141	141	147	150	153	2%	
			vs. KS CC average ($)				
In-Dist	(4)	(5)	7	5	3		
Out-Dist	(10)	(12)	8	6	4		
Non-Res	(42)	(44)	(15)	(16)	(15)		
Internat	(81)	(80)	(42)	(45)	(38)		

[1]Rank (2026): 1 = highest; 19 = lowest

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Mill Levy Analysis

- Local tax burden is lower than KS CC medians / averages in most measures

Allen CC: Mill Levy Data

	Allen CC	KS CC Median / Avg	Allen CC Rank[1]	Allen 5-Year Chng (%)	KS CC 5-Year Chng (%)
Mill Levy (2025)	19.044	27.935	15	(4.1)	(4.1)
Valuation (MM)	$199.0	$230.8	11	35.6	26.4
Taxes Levied (MM)	$3.8	$7.2	18	30.0	8.8
		Population			
Population (2024; 000s)	12.4	19.7	15	0.5	0.4
Mill Levy Taxes per person	$287	$358	13	22.0	12.5
		Enrollment			
12-Month HC (2024)	2,707	4,846	8	(31.8)	(16.4)
Mill Levy Taxes per HC	$1,222	3,286	17	63.8	35.4

[1]Rank (2026): 1 = highest; 19 = lowest

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Questions?

“Data is the just the start of a conversation.” - Jasper Lesage

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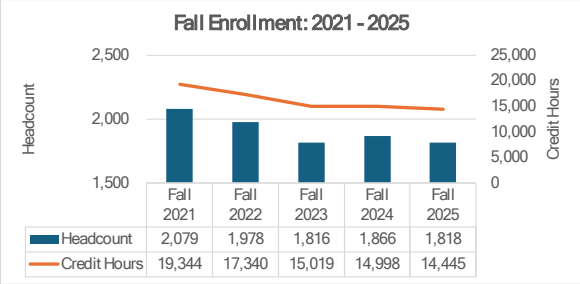
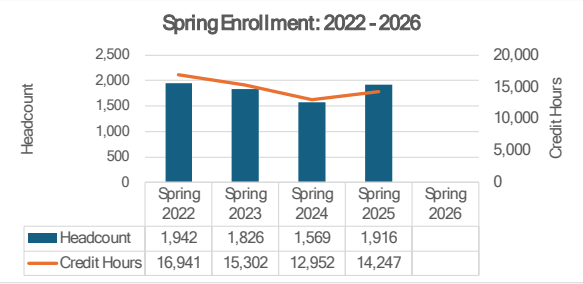
Allen Community College Strategic Plan - Key Metrics

Goal 1: Support Students and Their Success

Ensure access and clear pathways to student achievement through high-quality instruction and support.

Metric 1.1: Enrollment





Enrollment by Residency: Spring 2025			
	Headcount	Proportion of Headcount	Credit Hours
In-District	206	11%	1,681
Out-District	1,440	75%	9,203
Non-Resident	270	14%	3,363
	1,916		14,247

Enrollment by Gender: Spring 2025			
	Headcount	Proportion of Headcount	Credit Hours
Female	1,201	63%	8,513
Male	704	37%	5,664
Not Reported	11	1%	70
	1,916		14,247

Enrollment by Race: Spring 2025			
	Headcount	Proportion of Headcount	Credit Hours
Minority	338	18%	3,138
White	1,471	77%	10,064
Not Reported	107	6%	1,045
	1,916		14,247

Enrollment by Student Type: Spring 2025			
	Headcount	Proportion of Headcount	Credit Hours
New	115	6%	928
Transfer	25	1%	256
Other	1,776	93%	13,063
	1,916		14,247

Other includes continuing and high school students

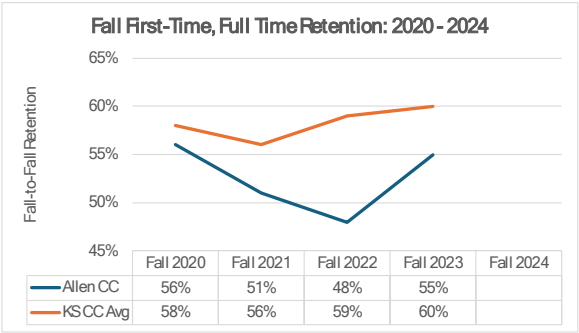
Enrollment by Full- and Part-Time Status: Spring 2025			
	Headcount	Proportion of Headcount	Credit Hours
Full-Time	536	28%	7,703
Part-Time	1,380	72%	6,544
	1,916		14,247

Enrollment by Location: Spring 2026			
	Headcount (Duplicated)	Credit Hours	Proportion of Credit Hours
Andover	1,747	11,557	19%
High Schools	701	2,657	4%
EDCF	43	308	1%
El Dorado	1,457	11,808	20%
Flint Hills	170	840	1%
McConnell AF	52	356	1%
Other / Non-S	7	21	0%
Rose Hill	172	1,141	2%
Online	4,812	31,331	52%
Winfield	14	119	0%
	9,175	60,138	

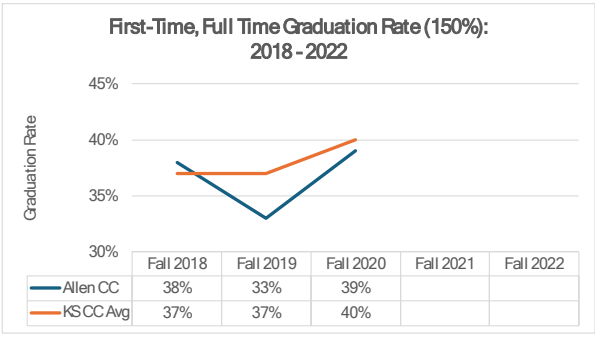
Enrollment by Degree-Level: Spring 2026			
	Headcount	Proportion of Headcount	Credit Hours
Associate	5,765	90%	55,968
Certificate	173	3%	1,476
SAPP	76	1%	570
Non-Degree	401	6%	2,124
	6,415		60,138

Enrollment by Division (of Declared Major): Spring 2026			
	Headcount	Proportion of Headcount	Credit Hours
ADMC	304	5%	3,348
CTE	1,346	21%	13,897
HEP	1,920	30%	18,183
HSS	1,929	30%	17,531
SEM	514	8%	5,046
Undeclared	402	6%	2,133
	6,415		60,138

Metric 1.2: Retention



Metric 1.3: Graduation



Metric 1.4: Transfer Rate

	Fall 2018	Fall 2019	Fall 2020	Fall 2021	Fall 2022
FTFT Cohort	29%	28%	29%	30%	

Source: IPEDS

Metric 1.5: Transfer GPA and Hours

	Fall 2020	Fall 2021	Fall 2022	Fall 2023	Fall 2024
Transfer GPA	3.36	3.24	3.40	3.42	3.35
Transfer Hours	45	47	43	41	43

Note: Students transferring to a state university in Kansas

Source: KBOR

Allen Community College Strategic Plan - Key Metrics

Goal 2: Advance Communities and Partnerships

Build collaborative relationships that strengthen workforce and community.

Metric 2.1: Graduate Wages

	AY2020	AY2021	AY2022	AY2023	AY2024
	Median Wages Within One Year of Graduation ($000s)				
Allen CC	$ 26.5	$ 26.9	$ 29.1	$ 31.0	$ 28.1
KSCC Avg	$ 25.9	$ 28.3	$ 31.0	$ 34.0	$ 33.9
	AY2016	AY2017	AY2018	AY2019	AY2020
	Median Wages After Five Years of Graduation ($000s)				
Allen CC	$ 33.2	$ 42.6	$ 43.1	$ 46.4	$ 49.8
KSCC Avg	$ 41.3	$ 43.9	$ 45.8	$ 48.3	$ 49.4

Note: Graduates employed regionally

Source: KBOR

Metric 2.2: Graduate Employment

	AY2020	AY2021	AY2022	AY2023	AY2024
	Percent Employed Within One Year of Graduation				
Allen CC	56.9	65.4	58.0	57.4	61.0
KSCC Avg	65.8	66.4	67.0	68.4	67.8
	AY2015	AY2016	AY2017	AY2018	AY2019
	Percent Employed After Five Years of Graduation				
Allen CC	67.7	67.7	63.3	61.0	53.0
KSCC Avg	61.5	62.4	61.0	61.3	60.3

Note: Graduates employed regionally

Source: KBOR

Metric 2.3: High School Enrollment

	Fall 2021	Fall 2022	Fall 2023	Fall 2024	Fall 2025
High Schools	65	58	61	72	56
HS Students	1,416	1,303	1,344	1,438	1,460
% of Total	20.2	19.4	20.4	21.0	21.1

Goal 3: Enhance Employee Success and Excellence

Develop and support a high-performing, engaged workforce that sustains instructional quality and student support.

Metric 3.1: Student-Faculty Ratios

	FY2021	FY2022	FY2023	FY2024	FY2025
	Fall Full-Time Equivalent (FTE) Students				
Allen CC	1,345	1,340	1,279	1,066	1,023
KSCC Avg	1,843	1,883	1,848	1,853	1,936
% difference	*73%*	*71%*	*69%*	*58%*	*53%*
	Fall Full-Time Equivalent (FTE) Faculty				
Allen CC	64	60	57	53	55
KSCC Avg	114	113	113	113	112
% difference	*56%*	*53%*	*50%*	*47%*	*49%*
	Student Faculty Ratio				
Allen CC	20:1	21:1	18:1	19:1	18:1
KSCC Avg	16:1	16:1	16:1	17:1	16:1

Source: IPEDS

Metric 3.2: Expense per 12-Month FTE Student

	FY2021	FY2022	FY2023	FY2024	FY2025
	12-Month FTE Enrollment				
Allen CC	1,404	1,338	1,140	1,041	
	Total Expense ($MMs)				
Allen CC	$ 14.5	$ 14.0	$ 13.2	$ 15.0	
	Total Expense per 12-Month FTE Enrollment ($000s)				
Allen CC	$ 10.5	$ 10.5	$ 11.6	$ 14.4	
KSCC Avg	$ 19.0	$ 20.8	$ 20.7	$ 21.3	

Source: IPEDS

Metric 3.3: Professional Development

	AY2021	AY2022	AY2023	AY2024	AY2025
Facutly Development-led Hours	6,479	12,946	16,386	13,821	11,921

Metric 3.4: Employee Turnover

	Professional	Admin	Operational	Total
FY2025 Turnover (%)	9.6	24.5	38.1	23.0

Allen Community College Strategic Plan - Key Metrics

Goal 4: Drive Institutional Sustainability and Growth

Ensure long-term financial sustainability and responsible stewardship to support student success and institutional growth.

Metric 4.1: Revenue Mix & Diversification

Annual Operating Budget: Revenue by Source ($MMs)					
	FY2022 (Act)	FY2023 (Act)	FY2024 (Act)	FY2025 (Act)	FY2026 (Bud)
	Amount				
Student	$ 18.1	$ 17.8	$ 18.3	$ 19.5	$ 20.4
State	$ 16.2	$ 19.3	$ 19.8	$ 19.1	$ 18.7
Local	$ 14.4	$ 14.3	$ 13.7	$ 15.4	$ 15.9
Other/Transfer	$ 0.7	$ 1.2	$ 1.8	$ 2.7	$ 1.9
Total	$ 49.4	$ 52.6	$ 53.6	$ 56.8	$ 56.9
	Proportion (%)				
Student	36.6	33.8	34.1	34.3	35.9
State	32.8	36.7	36.9	33.6	32.9
Local	29.1	27.2	25.6	27.1	27.9
Other/Transfer	1.4	2.3	3.4	4.8	3.3

Metric 4.2: Deferred Maintenance Designated Reserve

	FY2023 (Act)	FY2024 (Act)	FY2025 (Act)	FY2026 (Bud)	FY2027 (Bud)
Begin Balance	$ 4.7	$ 2.4	$ 2.0	$ 2.0	$ 0.6
Usage	$ (2.3)	$ (0.4)	$ (0.4)	$ (1.4)	$ (0.7)
End Balance	$ 2.4	$ 2.0	$ 1.6	$ 0.6	$ (0.2)
Note: FY2026 budget includes $0.5MM in Capital Outlay Mill Levy Fund					

Metric 4.3: Course Fill Ratio

	AY2021	AY2022	AY2023	AY2024	AY2025
Fill Ratio	59%	58%	60%	61%	68%

Metric 4.4: Average Class Size

	AY2021	AY2022	AY2023	AY2024	AY2025
Avg Class Size	12.9	12.2	12.5	12.9	14.6

Metric 4.5: Class Section Enrollment by Class Size

Section Size	Fall 2021	Fall 2022	Fall 2023	Fall 2024	Fall 2025
	Section Count				
1-5	296	258	297	175	151
6-10	439	490	390	349	271
11-15	432	405	421	388	283
16-20	350	408	409	383	350
+20	395	370	361	479	537
Total	1,912	1,931	1,878	1,774	1,592
	Section Percentage				
1-5	15.5	13.4	15.8	9.9	9.5
6-10	23.0	25.4	20.8	19.7	17.0
11-15	22.6	21.0	22.4	21.9	17.8
16-20	18.3	21.1	21.8	21.6	22.0
+20	20.7	19.2	19.2	27.0	33.7

Goal 5: Champion Excellence in Innovation

Advance innovation that enhances learning, workforce readiness, and institutional effectiveness while strengthening the student experience.

Metric 5.1: New Programs Launches

	AY2022	AY2023	AY2024	AY2025	AY2026
Associate's	4	0	3	1	4
Certificates	2	3	1	1	1
SAPPs	2	1	1	1	
Total	8	4	5	3	5

Metric 5.2: Business and Industry (B&I) Impact

	Career and Workforce Education Partners	Business and Industry Funding ($MMs)	Students Supported through B&I Funding
AY2026	51	$ 1.3	4,058

Goal 6: Inspire a Culture of Transparency, Trust, and Accountability

Promote ethical leadership and shared responsibility to strengthen governance and public trust.

Metric 6.1: Annual Audit Findings

Annual Operating Budget: Revenue by Source ($MMs)					
	FY2021	FY2022	FY2023	FY2024	FY2025
Significant Deficiencies	0	0	0	0	
Material Weaknesses	0	0	0	0	
Resolved	N/A	N/A	N/A	N/A	

Open Government Crash Course: Access to Public Records and Meetings in Kansas

By Maxwell E. Kautsch, Attorney at Law
Kautsch Law, LLC
810 Pennsylvania St., Ste. #207
Lawrence, KS 66044
(785) 840-0077
maxk@kautschlaw.com
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- These materials have been prepared Kautsch Law, LLC for informational purposes only.
- The opinions and positions expressed herein are those of the author.
- Transmission of the information is not intended to create, and receipt does not constitute, an attorney-client relationship.

Introduction

- Max Kautsch owns and manages a First Amendment-focused law practice in Lawrence, serves as the legal hotline attorney for the Kansas Press Association, and is the Education Program Coordinator for the University of Kansas School of Law.

Introduction

- Sources:
  - Best place to find Kansas laws is the website for the Kansas Revisor of Statutes, https://www.ksrevisor.org/ksa.html
  - Best place to find Attorney General Opinions is https://ksag.washburnlaw.edu/
  - Relevant cases included in this presentation are linked from Google Scholar
  - Details about the information herein can be found at the Kansas Open Government Guide published by the Reporters Committee for Freedom of the Press.

Topics

- **Value of transparency.** How and why state law governs a public agency's obligation to make meetings open to the public.
- **KORA/KOMA basics**. Discussion of common open government-related issues.
- **Exceptions to the rule.** When public agencies can legally withhold records, meet behind closed doors, or otherwise limit public engagement.
- **Q and A**. Happy to do my best to answer any KOMA-related questions.

Kansas Open Records Act (KORA)

- Common KORA issues:
  - Calculation and explanation of the “reasonable” fee/actual costs
  - Records provided did not meet requester's expectations
  - Requester believes there should be existing public records, but none are found
  - Is agency/entity covered by KORA, and if not, why not?
  - Failure to respond within 3 business days
  - Failure to provide the requested records
  - Access to criminal investigation records
  - Application of exemptions to disclosure and redaction

Kansas Open Records Act (KORA)

- The Kansas Open Records Act (KORA) was enacted in 1984 at K.S.A. 45-215 *et seq*. of the Kansas Statutes.
  - The Attorney General "noted" that the previous version of the law, "the so-called 'open records act'[,] could more properly be labeled a 'closed records act.'"
    - *Report on Kansas Legislative Interim Studies to the 1980 Legislature*, Proposal No. 16, p. 265 (1979).

Kansas Open Records Act (KORA)

- "[R]ecords are often the only tangible proof of governmental action and that such evidence must be open if the public is to be able to understand government, to identify governmental excesses, and to measure governmental successes."
  - *Report on Kansas Legislative Interim Studies to the 1980 Legislature*, Proposal No. 16, p. 265 (1979).

Public Policy in favor of Openness

- "The KORA…ensure[s] public confidence in government by increasing the access of the public to government and its decision-making processes."
  - *Telegram Publishing Co. v. Kansas Dept. of Transportation, 275 Kan. 779,* Syl. ¶ 2, (2003), cited by *Data Tree, LLC v. Meek*, 279 Kan. 445, 454 (2005).

Public Policy in favor of Openness

- "It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and *this act shall be liberally construed and applied to promote such policy*."
  - *Cypress Media, Inc. v. City of Overland Park*, 268 Kan. 407, 416 (2000), citing K.S.A. 45-216(a)(emphasis in original).
    - See also *Wichita Eagle and Beacon Publ'g. Co., Inc. v. Simmons*, 50 P.3d 66, 274 Kan. 194 (2002).

Public Policy in favor of Openness

- Liberal construction
  - "The function of liberal construction is called into use where there is ambiguity in the language of the statute or, in other words, where there are one or more interpretations which may fairly be made." *Salina Journal v. Brownback*, 54 Kan.App.2d 1, 9, 394 P.3d 134 (2017).

Public Policy in favor of Openness

- Public records are presumed open to the public
  - "All public records shall be open for inspection by any person, except as otherwise provided by this act." K.S.A. 45-218(a).
  - "Any person may make abstracts or obtain copies of any public record to which such person has access under this act." K.S.A. 45-219(a).

Exceptions to Openness

- Some government records are expressly exempt from disclosure, including those made by:
  - Judges
  - Vendors
  - Elected leaders of governing bodies
    - Includes members of city councils and county commissions
  - Legislators

Exceptions to Openness

- Public agencies, as set forth in K.S.A. 45-221, "possesses discretionary authority to allow or prohibit public access" to public records. AGO 89-107.
  - KORA itself does not require closure of any record.
  - Other statutes or rules may mandate closure via K.S.A. 45-221(a)(1), discussed *infra*.

Exceptions to Openness

- There are a total of 56 enumerated exception to, or exemptions for, the general rule that a public agency must disclose public records upon request. K.S.A. 45-221(a)(1) through (56).

What is a “public record”?

- A “public record” means any recorded information, regardless of form, characteristics or location, which is made, maintained or kept by or is in the possession of:
  - (A) Any public agency; or
  - (B) 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. See K.S.A. 45-217(l); see also K.S.A. 45-217 (definitions).

What is a “public record”?

- The words “regardless of form or characteristics” means that “public records are not restricted to just written information.”
  - *Burroughs v. Thomas*, 23 Kan. App.2d 769, 771 (1997).

What is a “public record”?

- Definition of “public record” was broadened in 2016 include emails government officials send on their private accounts related to government business
  - The amendment broadening the definition was promulgated by the Attorney General’s office and had the effect of reversing AGO 15-10.
    - Amendment arose out of governor’s refusal to provide emails sent by the budget director to lobbyists related to the 2015 budget.

What is a “public record”?

- “Texts on personal phones is the major reason the Kansas Legislative broadened the definition of what is a public record.”
  - Memorandum Decision, April 4, 2025, p. 15, *Marion County Record v. City of Marion*, MN-2024-CV-000036, p. 15.

What is a “public record”?

- Disclosure in native format required
- “[A] public agency, upon request,” must “provide a copy of a public record in the format in which it maintains that record.”
  - *Roe v. Phillips County Hospital*, Kansas Supreme Court Case No. 122,810, Syl. 4, January 6, 2023.

What is a “public record”?

- Front page of a standard offense report except SSN (other parts of police reports remain discretionarly closed). AGO 98-38; 87-25.
  - If a police department does not maintain a blotter, it is under a common law duty to disclose basic information about arrests reasonably contemporaneously with the arrest. Kan. Att’y Gen. Op. 98-38.
  - Mug shots may be discretionarily withheld. AGO 87-25.

What is a “public record”?

- Atuopy reports, unless they have been designated as a criminal investigation record. See K.S.A. 22a-232(b); AGO 86-05.

What is a “public record”?

- “Statistical information not descriptive of any identifiable person is subject to disclosure.”
  - *Kansas Open Records Act Guidelines*, Kansas Attorney General’s Office, Rev. July 1, 2015, p. 19, citing K.S.A. 2014 Supp. 45-221(e).

What is a “public record”?

- Narrative statements in attorney billing records for services rendered to public agency client. *Cypress Media, Inc. v. City of Overland Park*, 268 Kan. 407 (2000).

What is a “public record”?

- Settlement agreements involving public agencies
  - Contractual provisions and settlement agreements attempting to circumvent KORA are void because they violate public policy. See AGO 93-55; 91-116.
  - KU's settlement agreements involving rowers who were the victims of sexual assault.
  - The city of Overland Park’s employment settlement related to the shooting death of John Albers by OP police.

What is not a "public record"?

- Truly private records
  - "Records which are owned by a private person or entity and are not related to functions, activities, programs or operations funded by public funds…." K.S.A. 45-217(l)(3)(A).
    - Privacy interests are ordinarily protected via K.S.A. 45-217(b)(definition of "clearly unwarranted invasion of personal privacy") and 45-221(a)(30)(allows public agencies to exercise discretion not to disclose records that constitute a "clearly unwarranted invasion of personal privacy"). See *infra*.

What is not a “public record”?

- Records in the possession of legislators and governmental executives
  - “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 excluded from the definition of “public records” and thus unavailable under KORA. See K.S.A. 45-217(l)(3)(B).

What is not a “public record”?

- Exempting agency heads and legislators is intended to “exclude records kept by individual members but not records of the governing bodies they serve.”
  - Ted P. Frederickson, *Letting the Sunshine in: An Analysis of the 1984 Kansas Open Records Act*, 33 U. Kan. L. Rev. 205, 221 (1985).

What is not a “public record”?

- Records not yet in existence
  - “The Kansas Open Records Act does not require provision of records based upon a standing request or prospective request for documents not yet in existence.” AGO 98-51.

What is a “public agency”?

- Only “public agencies” are required to respond to KORA requests
  - “Public agencies” are defined under the law as “the state or any political or taxing subdivision of the state or any office, agency or instrumentality thereof, or **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.” K.S.A. 45-217(k)(1)(emphasis added).
    - Common examples include cities, counties, school boards, and courts

What is a “public agency”?

- Certain nonprofit organizations
  - “Each not-for-profit entity that receives public funds in an aggregated amount of $350 or more per year shall be required to document the receipt and expenditure of such funds…[and] shall, upon request, make available to any requester a copy of documentation of the receipt and expenditure of such public funds received by such not-for-profit entity.” K.S.A. 45-240(a).

What is a “public agency”?

- Certain nonprofit organizations
  - K.S.A. 45-240 also does “not apply to any: (1) Health care provider; (2) individual person; (3) for profit corporation; or (4) partnership.” K.S.A. 45-240(d).

What is a “public agency”?

- Certain nonprofit organizations
  - “Receipt of public funds may subject the financial records of a not-for-profit to the KORA, even if such not-for-profit would otherwise be considered a vendor.” AGO 2004-34.
  - “[C]onsultants hired to perform 'governmental functions’” are subject to KORA.” AGO 94-111.
  - However, the NCAA (a nonprofit) is not subject to KORA because it is a vendor “providing specific services in exchange for the public funds it receives.” AGO 97-64.

What is a “public agency”?

- Instrumentalities
  - See K.S.A. 45-217(k)(1)
  - “KORA explicitly includes instrumentalities of political and taxing subdivisions of the state in its definition of public agencies.”
  - “An instrumentality is ‘a thing used to achieve an end or purpose, or a means or agency through which a function of another entity is accomplished.’” *State v. Great Plains of Kiowa County, Inc*. (Kan. 2018).

What is a “public agency”?

- Instrumentalities
  - In that 2018 case, at the urging of the Attorney General’s Office, the Kansas Supreme Court ruled a community nonprofit hospital established by the county’s authority under state statute was an instrumentality and had to turn over its finances to the county commission because it was an “arm of the county government”;
    - hospital had argued it was a “vendor.”
    - See also AGO 88-61 (discussion of “instrumentality”)

What is not a “public agency”?

- Vendors
  - “[N]o entity is included under the KORA solely because it receives public funds in exchange for goods or services.” AGO 2004-34.
    - However, when a county contracted with a private company to provide computer access to county records, the AG found that the contract did not relieve county of KORA obligations to the extent the county retained the public records that had been computerized. AGO 2009-14.

What is not a “public agency”?

- Vendors
  - Transparency impact? One example:
    - In 2015, the Topeka school district claimed “information” about a driver charged with a felony “has to come from” the private contractor. The school district claimed that it didn’t “even have a list of the drivers. It’s their company and their employees.”
  - Was the contractor an “instrumentality”?

What is not a "public agency"?

- The judicial branch?
  - KORA's definition of "'[p]ublic agency' shall not include…any municipal judge, judge of the district court, judge of the court of appeals or justice of the supreme court." K.S.A. 45-217(k)(2)(B).
    - The legislature chose to exempt the judiciary because "a separation of powers problem could have arisen…[which was] a result reached by the Kentucky Supreme Court" regarding that state's open records law. See Frederickson, *Letting the Sunshine In*, p. 218-19.

What is not a “public agency”?

- But access to court records is subject to KORA.
  - See, e.g., KORA policy, Kansas Judicial Branch

Agency Duties

- Agencies are required to designate a “public information officer” to receive and respond to such requests under K.S.A. 45-226.
  - Default custodian is usually the governing body’s clerk.
- Agencies must make information available to the public about how to access the agency’s public records. K.S.A. 45-227.

Agency Duties

- Notifying requester of improper address
  - “If the person to whom the request is directed is not the custodian of the public record requested, such person shall so notify the requester and shall furnish the name and location of the custodian of the public record, if known to or readily ascertainable by such person.”
    - K.S.A. 45-218(c).

Agency Duties

- Agency policies and procedures for responding to KORA requests must:
  - provide full access to public records,
  - protect public records from damage and disorganization,
  - prevent excessive disruption of the agency's essential functions,
  - provide assistance and information upon request and
  - insure [ensure] efficient and timely action in response to applications for inspection of public records."
    - K.S.A. 45-220(a).

Agency Duties

- Written requests required?
  - Although a written request is not technically required by the law, the law allows each agency to require a written request if the agency so chooses, and as such, most do. K.S.A. 45-219(a).
    - See also AGO 2009-18.

Agency Duties

- Identification of the requestor required?
  - A public agency may require proof of identity of any person requesting access to a public record. K.S.A. 45-220(b).

Agency Duties

- The agency may require that in order to process the request, the requester must indicate in writing that the requester will not: “(A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or…”
  - K.S.A. 45-220(c)(2)

Agency Duties

- "…(B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed."
  - K.S.A. 45-220(c)(2).
- Violators are subject to civil penalties. See K.S.A. 45-230.

Handling Requests

- An agency may create forms for requesting its records, but the requester must ultimately decide how to frame the specific request.
  - Some agencies, such as the Unified Government of WY CO and the city of Junction City, use an automated web interface.
- Requesters are not legally required to use the agency's form, see AGO 2009-18, but doing so may engender goodwill between the requester and the agency
- No matter the format, it is the substance of the request that is crucial.

Handling Requests

- Regardless of how the request is phrased, it must be a request for records, not information.
  - A request for “information about finances” does not describe a record that exists
- A request for information, or for records that are not in the agency’s possession, can be denied on the basis that the “requested record does not exist.”
- An agency is not required to create a record in response to a request.

Handling Requests

- Requesters may need to obtain all the records an agency has related to a particular topic, and may thus seek “any and all” documents of a particular type or category.

Handling Requests

- But considering applicable fee provisions and relationships with government entities a better approach sometimes may be to ask for “documents sufficient to identify” the subject matter.

Handling Requests

- Agency may be obligated to explain the denial
  - "If the request for access is denied, the custodian shall provide, **upon request**, a written statement of the grounds for denial…." See K.S.A. 45-218(d) (emphasis added).

Handling Requests

- Agency may be obligated to explain the costs
  - "**Upon request**, a public agency shall provide to the person requesting access to or copies of public records pursuant to this section an itemized statement of costs incurred by the public agency and charged to such requester.
  - "Such itemized statement shall include, but not be limited to, the hourly rates charged for each employee involved in making the requested records available and an itemized list of any other fees charged to provide access to or furnish copies of the requested records."
  - K.S.A. 45-219(c)(4)(emphasis added).

Agency response: Generally

- A KORA request "shall be acted upon as soon as possible, but not later than the end of the third business day following the date that the request is received."
  - K.S.A. 45-218(d).
    - The three-day clock begins the day after the request is received

Agency response: Generally

- If the agency is unable to produce the record “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.”
  - K.S.A. 45-218(d).

Agency response: Generally

- Interpreting the words “immediately” and “as soon as possible” to mean it is permissible for an agency to respond anytime within the three-day period, such as by waiting until 5 p.m. of the third day to deliver requested records, “appears to contradict the language of the act and the intention of the legislature.”
  - Ted P. Frederickson, *Letting the Sunshine in: An Analysis of the 1984 Kansas Open Records Act*, 33 U. Kan. L. Rev. 205, 224 (1985).

Agency response: Generally

- Unreasonable burden or disruption
  - An agency "may refuse to provide access to a public record, or to permit inspection, if a request places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency. However, refusal under this subsection must be sustained by preponderance of the evidence." K.S.A. 45-218(e).
    - "**CAUTION**—this provision should be used only in extreme circumstance." Kansas Open Records Act Guidelines, Kansas Attorney General's Office, Rev. July 1, 2015, p. 7. (emphasis in original).

Agency response: Costs

- If the agency produces records, it "may require a written request and advance payment of the prescribed fee." K.S.A. 45-219(a).
- Such fee must be "reasonable" and related only to the "actual costs" associated with producing the records, but the agency is also permitted to charge for "staff time" spent responding to the request. See K.S.A. 45-219(c). See also *Data Tree, LLC v. Meek*, 279 Kan. 445 (2005).
  - Agency should produce an itemization of the expenses to help establish reasonableness

Agency response: Costs

- Fees assessed to requesters "shall not exceed the actual cost of furnishing the requested records, including the cost of staff time required to make the information available." K.S.A. 45-219(c)(1).
- "Actual costs may include the cost to review and redact the requested records but shall not include incidental costs incurred by the public agency that are not attributable to furnishing the requested records." Id.
  - See also 2025 HB 2134, Sec. 1.

Agency response: Costs

- “If the public agency incurs costs for staff time to provide access to or furnish copies of public records, the agency shall use in good faith the lowest-cost category of staff reasonably necessary to provide access to or furnish copies of public records.”
- “Charges for staff time shall be based on the employee’s salary or hourly wage.”
- “Charges for staff time shall not include the costs of employee benefits.”
  - K.S.A. 45-219(c)(3)

Agency response: Costs

- “When the staff time needed to respond to a records request will exceed five hours or the estimated actual cost for staff time needed to fill the request exceeds $200, the public agency shall make reasonable efforts to contact the requester and engage in interactive communication about mitigating costs to fill the request. The requester is not obligated to mitigate costs.
  - K.S.A. 45-219(e)(1)

Agency response: Costs

- “If a public agency has made reasonable efforts to contact the requester pursuant to this section and the requester has failed to respond by the end of the third business day, the records request will be deemed to be withdrawn until a subsequent contact has been made by the requester to the public agency.”
- “As used in this subsection, ‘reasonable efforts to contact the requester’ means contacting the requester through the means of communication that the requester provided to be used by the agency to respond to the request.”
  - K.S.A. 45-219(e)(2) and (3)

Agency response: Costs

- In a 2020 attorney general KORA enforcement action, that office found that “While the city may recover its actual costs in responding to a KORA request, those costs must still be reasonable. An hourly rate of $225.00 per hour for attorney time is per se unreasonable. Outside counsel may charge a governmental entity for its services. However, based on the public policy and purpose of the KORA, it is unreasonable for a public agency to pass those costs onto a requester without a significant reduction in the hourly fee rate.”

Agency response: Redact and disclose

- If an agency is in possession of records that are responsive to the request, but the records also contain information subject to nondisclosure under K.S.A. 45-221, a "public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act." K.S.A. 45-221(d).
  - Redaction "may have the practical impact of requiring creation of a new document." Kansas Open Records Act Guidelines, Kansas Attorney General's Office, Rev. July 1, 2015, p. 10.

Agency response: Redact and disclose

- "Redaction is required if public record contains material that is not subject to disclosure. K.S.A. 2014 Supp. 45-221(d); see also *Tew v. Topeka Police & Fire Civ. Serv. Comm'n*, 237 Kan. 96, Syl. ¶ 7 (1985) (discussing prior law); *State ex rel. Stephan v. Harder*, 230 Kan. 573, Syl. ¶ 3 (1982) (discussing prior law)."
  - Kansas Open Records Act Guidelines, Kansas Attorney General's Office, Rev. July 1, 2015, p. 19.

Agency response: Redact and disclose

- Thus, blanket closure of the record, simply because it contains information that may be subject to nondisclosure, is not permissible.

Public records generally subject to disclosure upon request; exceptions

- Whether a record is available upon request often depends on whether and to what extent the public agency to whom the request is directed asserts any of the 56 exemptions set forth in the law that provide an agency “shall not be required to disclose” certain records. K.S.A. 45-221(a)(1) thru (56).

Public records generally subject to disclosure upon request; exceptions

- Public agencies have discretion to withhold disclosure of certain records depending on the nature or character of that record.

Public records generally subject to disclosure upon request; exceptions

- "The burden of establishing the applicability of an exemption from disclosure under [KORA] requires the party claiming the exemption to provide more than conclusory language, generalized allegations, or mere arguments of counsel. A sufficiently detailed record must be provided to show the reasons why an exemption applies to the materials requested."
  - *Southwest Anesthesia Associates v. Southwest Medical Center*, 23 Kan. App.2d 950, Syl. ¶ 2 (1997).

Public records generally subject to disclosure upon request; exceptions

- Three general policy reasons records may be closed:
  - Personal privacy, i.e., medical records, see, e.g., K.S.A. 45-221(a)(3) and AGO 11-05.
  - Safety/security, i.e., criminal investigation records, see, e.g., K.S.A. 45-221(a)(10).
  - Preliminary notes while policies are developed or administrative procedures are underway, see, e.g. K.S.A. 45-221(a)(20), AGO 13-5.

Public records generally subject to disclosure upon request; exceptions

- KORA does not govern record retention
  - "Nothing in this act shall be construed to require the retention of a public record nor to authorize the discard of a public record." K.S.A. 45-216(b).
    - State agencies and counties are subject to the Records Preservation Act and are prohibited from destroying public records except as permitted by minimum records retention schedules as set forth by the State Records Board. K.S.A. 45-403; 45-404(b).
    - Unless some specific law applies to a specific record, all other public agencies may dispose of their records as they deem advisable.

Agency response: Nondisclosure

- K.S.A. 45-221(a)(1): agency may choose not to disclose "[r]ecords the disclosure of which is specifically prohibited or restricted" by federal or state law.
  - Thus, any provision in the Kansas statutes that references closure of records can become a basis under KORA for an agency's basis of denial.
  - Allows for application of federal laws such as HIPAA and FERPA to protect certain types of information, such as medical or education records
  - Allows for statutes requiring closure to be applied via KORA, i.e., Child in Need of Care statutes, Care and Treatment statutes

Agency response: Nondisclosure

- But beware agency overreach of (a)(1)
- Example: Public agencies should not rely on statements of third-party corporations to determine whether disclosure of a record is a "trade secret" under any other statute and thus subject to nondisclosure under K.S.A. 45-221(a)(1).
  - See, e.g., *A private company asked Kansas to hide public information, so the state obliged*, November 18, 2021, Kansas News Service.

Agency response: personnel

- K.S.A. 45-221(a)(4): personnel records exemption, which excludes records related to job applicants and employees except for records containing "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."
  - The Court of Appeals interpreted this language to also apply to applicants for political appointments in 2017.

Agency response: personnel

- In March 2021, a Johnson County District Court judge ordered that the city of Overland Park disclose records related to a $70,000 severance package the city paid to an officer who killed 17-year-old John Albers in January of 2018.
  - City argued (rather bizarrely) that “an agreement setting forth the terms and conditions to end employment (i.e. severance agreement)” did not “constitute[] an ‘employment related agreement.’”

Agency response: personnel

- The judge ordered disclosure of the records, ruling that if such agreements were kept secret, “how would the public ever know what amounts have been paid and under what conditions? … One of the fundamental concepts behind Kansas’ open records law is to provide for transparency and accountability in government. If an agency felt that these types of agreements were not subject to disclosure what incentive would there be to use tax dollars responsibly if the amount would never be disclosed?”

Criminal investigation records

- Under KORA, “criminal investigation records” means “records of an investigatory agency or criminal justice agency…compiled in the process of preventing, detecting or investigating violations of criminal law….” K.S.A. 45-217(e)(2).

Criminal investigation records

- Definition “does not include police blotter entries, court records, rosters of inmates of jails or other correctional or detention facilities or records pertaining to violations of any traffic law other than vehicular homicide as defined by K.S.A. 21-3405, prior to its repeal, or K.S.A. 2022 Supp. 21-5406, and amendments thereto.” *Id*.

Criminal investigation records

- Public agencies engaged in law enforcement “shall not be required to disclose…criminal investigation records, except as provided herein.” K.S.A. 45-221(a)(10)(internal punctuation omitted).

(10) Criminal investigation records, except as provided herein. The district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public;

(E) would not endanger the life or physical safety of any person; and

(F) would not reveal the name, address, phone number or any other information that specifically and individually identifies the victim of any sexual offense described in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of subparagraphs (A) through (F) that necessitate closure of that public record.

Criminal investigation records

- “This exception, like the others, is discretionary, meaning that the records custodian has the discretionary power to release them.”
  - Ted P. Frederickson, *Letting the Sunshine in: An Analysis of the 1984 Kansas Open Records Act*, 33 U. Kan. L. Rev. 205, 243 (1985).

Criminal investigation records

- “But it is unique in that it provides an opportunity for a requester to contest the custodian's decision.” *Id*.
  - “The district court, in an action brought by a requester, ‘may’ order disclosure of the records of a specific criminal investigation, subject to such conditions as the court may impose, if the court finds that disclosure is in the public interest….” *Id*.; see K.S.A. 45-221(a)(10).

Criminal investigation records

- Disclosure often hinges on whether such disclosure is in the "public interest," a term of art that is undefined in KORA.
  - K.S.A. 45-221(a)(10)(A).

Criminal investigation records

- Defining the term was central to the first appellate case interpreting the "criminal investigation records" exception, *Harris Enterprises, Inc., v. Moore*, 241 Kan. 59 (1987).

Criminal investigation records

- There, a local newspaper made a KORA request for the police reports in a Johnson County triple homicide case after the defendant was convicted at trial.

Criminal investigation records

- “After a four-day bench trial, the district court determined the evidence was sufficient to establish a public interest in the disclosure of some of the records sought by the appellant.” *Harris* at 62.

Criminal investigation records

- The district court found that “to be a matter involving public interest, it must be a matter which affects a right or expectancy of the community at large and must derive meaning within the legislative purpose embodied in the statute.” *Harris* at 66.
  - Public interest means “more than ‘mere curiosity.’”

Criminal investigation records

- Plaintiff had proved “public interest” in the records because there was a “pattern of disputed or disagreed upon facts and circumstances arising out of the investigation” on the part of various public officials that had “thrust controversy concerning their official actions into the public spotlight and attention.” *Harris* at 66.

Criminal investigation records

- “However, after conducting an in camera inspection of the records, the court held the documents contained no information which would promote the public interest.” *Id*.

Criminal investigation records

- The Kansas Supreme Court affirmed the district court's reasoning and decision to refuse to order disclosure of the records.

Criminal investigation records

- Thus, *Harris* may stand for the proposition that even if a requester proves public interest, “it is still within the trial court's discretion whether or not to order disclosure.” *Harris* at 65.
  - See also *Seck v. Overland Park*, 29 Kan. App.2d 256 (2000).

Criminal investigation records

- But by 2002, fifteen years after *Harris* was decided, the Kansas Supreme Court noted that "the manner in which our appellate courts would construe the K.S.A. 45-221(a)(10) exception is not presently clear in light of *Harris*."
  - *Willis v. Kansas Highway Patrol*, 273 Kan. 123 (2002).

Criminal investigation records

- As such, *Harris* is not dispositive.
- In an absence of controlling appellate precedent, it is instructive to review district court cases where “public interest” in “criminal investigation records” was at issue

Criminal investigation records

- In 2021, a Sedgwick County District Court judge ordered disclosure of records despite the defendant's reliance on *Harris*.
  - See *Wichita Eagle and Beacon Publishing Co., Inc. v. The City of Wichita, Kansas*, Sedgwick County District Court Case No. 17 CV 2745.

Criminal investigation records

- In that case, the *Wichita Eagle* sought copies of body camera footage of two separate incidents involving questionable investigative practices by the Wichita Police Department.

Criminal investigation records

- The city denied the requests in part based on K.S.A. 45-221(a)(10)(A).

Criminal investigation records

- City argued in court that the *Eagle* could not prove that disclosure was in the public interest and even if it could, the court still should follow *Harris* and decline to order disclosure.

Criminal investigation records

- In granting the paper's motion for summary judgment, the district court ignored the City's assertion that the *Eagle* had to prove public interest in order to compel disclosure of the records, instead citing the statute itself for the proposition that the burden of proof is on the agency to sustain its decision to deny access.

Criminal investigation records

- The court cited *Harris* for "guidance" to define public interest.
  - "'[T]o be a matter involving public interest, it must be a matter which affects a right or expectancy of the community at large and must derive meaning within the legislative purpose embodied in the statute.' Id. at 66."
    - Memorandum Decision, p. 13.

Criminal investigation records

- The court ruled that disclosure of the footage in both cases was in the public interest because “the community at large has an expectation that police investigations will be conducted fairly and appropriately.”
- Judge ordered disclosure of the footage

Criminal investigation records

- Also ruled in favor of the *Eagle*'s request for attorney fees, noting it was "apparent that the City acted in bad faith and without a reasonable basis in law" in part because it had claimed disclosure would interfere with an ongoing investigation under K.S.A. 45-221(a)(10)(B) when there was no evidence of any such investigation.

Criminal investigation records

- Then, in April of 2021, during a KORA lawsuit brought by a Kansas City-area television station, the City of Overland Park did not even wait for a court order before it released criminal investigation records related to the shooting death of John Albers.
  - The *Washington Post* used the records the station obtained to produce a short documentary film highlighting the deficient internal investigation related to John's death.

Criminal investigation records

- body camera and vehicle camera footage
  - Such data is “considered a criminal investigation record as defined in K.S.A. 45-217, and amendments thereto.” K.S.A. 45-254(a).

Criminal investigation records

- body camera and vehicle camera footage
  - The “subject” of such video (or their estate) is entitled to view the video within 20 days of making a request to the agency to make the video available for such purpose. K.S.A. 45-254(b) and (c).

Administrative adjudications

- “Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if:
- (A) Disclosure would interfere with a prospective administrative adjudication or civil litigation;
- (B) disclosure would reveal the identity of a confidential source or undercover agent; or
- (C) the investigation is formally closed and the agency determines that no violation occurred.”
  - K.S.A. 45-221(a)(11)

Preliminary Data

- Government not required to disclose "[n]otes, 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…." K.S.A. 45-221(a)(20).
  - See also AGO 13-5 (internal communications while policies are developed or administrative procedures are underway not required to be disclosed).

Preliminary Data

- These provisions "are intended to protect an agency's internal predecisional deliberations from early disclosure." Frederickson, *Letting the Sunshine In*, 33 Kan. L. Rev. at 249.
- 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." K.S.A. 45-221(a)(20).

Agency response: Privacy

- K.S.A. 45-221(a)(30): “Clearly unwarranted invasion of personal privacy”
- An agency can choose not disclose records that would reveal “information that would be highly offensive to a reasonable person, including information that may pose a risk to a person or property and is not of legitimate concern to the public.” K.S.A. 45-217(d).
  - The Kansas Supreme Court has found that social security numbers, dates of birth, and mother’s maiden name are “of a personal nature” and thus not subject to disclosure. *Data Tree, LLC v. Meek*, 279 Kan. 445 (2005).

Agency response: Privacy

- Therefore, if the requested records contain information that is of legitimate public concern, they must be disclosed under KORA, even if such information may be considered highly offensive.

Enforcement

- “Any person whose request for public records has been denied or impeded has statutory standing to enforce the purposes of KORA by filing a cause of action in the district court of any county in which the records are located.”
  - *Hunter Health Clinic v. Wichita State University*, 52 Kan. App. 2d 1, Syl. ¶ 4, 362 P.3d 10 (2015); see also K.S.A. 45-222(a).

Enforcement

- However, KORA does not specifically direct the procedural mechanism by which a case brought pursuant to its provisions should be resolved.
  - K.S.A. 45-222(g) references a "hearing and trial."
    - In some cases, KORA suits have been resolved through a bench trial. See *Harris Enterprises v. Moore*, 241 Kan. 59, 62, 734 P.2d 1083 (1987).
    - In some cases, the matter has been submitted to the court on stipulated facts. See *Hunter Health Clinic*, 52 Kan. App. 2d at 2.
    - In other cases, cross-motions for summary judgment have been used. See *State v. Great Plains of Kiowa County, Inc.*, 308 Kan. 950, 952, 425 P.2d 290 (2018).

Enforcement

- If no suit is brought, the Attorney General's Office is the state's de facto enforcement agency
  - file a complaint with the Attorney General's Office on its website.
  - Legislature granted additional enforcement powers as of July 1, 2015.
    - See K.S.A. 45-251
- Requester may also file a complaint with either the county or district attorney in which the public agency is located

Burden of proof

- "In any action hereunder…the burden of proof shall be on the public agency to sustain its action." K.S.A. 45-222.
  - See *Telegram Pub. Co., Inc. v. Kansas Dept. of Transp.*, 275 Kan. 779, 69 P.3d 578 (2003); *Wichita Eagle and Beacon Pub. Co., Inc. v. Simmons*, 50 P.3d 66, 274 Kan. 194 (2002).

Burden of proof

- "The burden of proving that an item is exempt from disclosure is on the agency not disclosing."
  - *Cypress Media v. City of Overland Park*, 268 Kan. 407, 416, 997 P.2d 681 (2000), cited by *Wichita Eagle and Beacon Publishing Co., Inc. v. The City of Wichita, Kansas*, Sedgwick County District Court Case No. 17 CV 2745, Memorandum Opinion, p. 10.

Attorney Fees

- “The court shall award costs and a reasonable sum as an attorney’s fee for services rendered in such action, including proceedings on appeal, to be recovered and collected as part of the costs to the plaintiff if the court finds that the agency’s denial of access to the public record was not in good faith and without a reasonable basis in fact or law.”
  - K.S.A. 45-222(d).

Attorney Fees

- Private plaintiff will not recover attorney fees unless the agency's denial was both "not in good faith" AND "without a reasonable basis in fact or law."

Attorney Fees

- Agency can ask for fees to be assessed against the plaintiff; same standards apply.
  - Fees have never been awarded to agency

Kansas Open Meetings Act (KOMA)

- The Kansas Open Records Act (KORA) was enacted in 1982 at K.S.A. 75-4317 *et seq*. of the Kansas Statutes.
  - Allows the public to observe meetings of governing bodies
  - Presumption of openness for public meetings dates to at least 1868
    - "Every board of county commissioners….shall sit with open doors, and all persons conducting in an orderly manner may attend their meeting…." K.S.A. 19-218.

Kansas Open Meetings Act (KOMA)

- Common KOMA issues and concerns
  - Executive sessions
    - Improper motions for executive session
    - Discussing subject matter not referenced in motion for recess
    - Entering executive session without making minutes and having vote
    - Failing to return to open session as described in motion
    - Taking binding action in executive session
  - Serial communications
  - Subordinate groups subject to KOMA
  - Agendas and minutes
  - Failure to provide notice

Kansas Open Meetings Act (KOMA)

- “[I]t 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.” K.S.A. 75-4317(a).

Kansas Open Meetings Act (KOMA)

- KOMA codifies the Legislature's "recognition of the fact that a representative government is dependent upon an informed electorate…." K.S.A. 75-4317(a).

Kansas Open Meetings Act (KOMA)

- KOMA has been enacted for the "public benefit" and therefore is "subject to broad construction in order to carry out the stated legislative intent." *State ex rel. Murray v. Palmgren*, 231 Kan. 524, 531 (1982).

Which bodies are subject to KOMA?

- KOMA is broad in scope
  - Generally, “all meetings for the conduct of the affairs of, and the transaction of business by, **all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof…**shall be open to the public.” K.S.A. 75-4318(a)(emphasis added).

Which bodies are subject to KOMA?

- KOMA is broad in scope
  - Governing bodies subject to KOMA include “boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds….”
    - K.S.A. 75-4318(a)

Which bodies are subject to KOMA?

- KOMA is broad in scope
  - "State political and taxing subdivisions" include, but are not limited to:
    - State agencies and boards, unless otherwise provided. AGO 86-176.
    - Cities, counties, townships. AGO 81-288.
    - School districts, community colleges. AGO 81-258.
    - Watershed districts. AGO 85-161.
    - Rural water districts. AGO 89-92; 88-97.
    - Drainage districts. AGO 90-69.
    - Local historic preservation committees administering K.S.A. 75-2724. AGO 99-22.

Which bodies are subject to KOMA?

- KOMA applies to “subcommittees” and “subordinate groups”
  - “When a subcommittee or other subordinate group is created by a public body or agency, whenever a majority of such subcommittee or other subordinate group meets, such subcommittee or other subordinate group shall be subject to the requirements of this act.” K.S.A. 75-4318(h), as amended by 2025 HB 3134, Sec. 5.

Which bodies are subject to KOMA?

- KOMA applies to “subcommittees” and “subordinate groups”
  - “Unless otherwise stated in law, a private entity will only be considered a subordinate group of a legislative or administrative body of the state or a political and taxing subdivision if such private entity is under the control, whether directly or indirectly, of a legislative or administrative body of the state or a political and taxing subdivision.” K.S.A. 75-4318(i), as amended by 2025 HB 3134, Sec. 5.

Which bodies are subject to KOMA?

- Examples of “subordinate groups” subject to KOMA:
  - 1) School District Advisory Board. AGO 84-81.
  - 2) Fire District Advisory Board. AGO 86-84.
  - 3) Mayor’s Commission. AGO 88-25.
  - 4) Appointed employee grievance committees. AGO 91-31.
  - 5) SRS Drug Utilization Review Board. AGO 93-41.
  - 6) Parental boards under Recreation Commission. AGO 93-73.
  - 7) House and senate conference committees. AGO 93-113.

Which bodies are subject to KOMA?

- “Kansas Attorney General opinions have identified four criteria to be used in determining whether a body is an agency subject to the KOMA:
  - 1) If the agency has the authority to make governmental decisions and act for the state, it is covered by an open meetings law. If it only collects information, makes recommendations or renders advice, it is not.
  - 2) Does the agency have independent authority in the exercise of its functions?
  - 3) Is the agency subject to governmental audits or otherwise have its business procedures supervised?
  - 4) Finally, one court has defined ‘governmental agency’ to include corporate instrumentalities that accomplish public ends, both governmental and proprietary.” AGO 94-99.

What is a “meeting”?

- As used in the open meetings act, “meeting” means any gathering or assembly in person or through the use of a telephone or any other medium for interactive communication **by a majority of the membership of a public body** or agency subject to this act for the purpose of discussing the business or affairs of the public body or agency.
  - K.S.A. 75-4317a(emphasis added).

What is a “meeting”?

- “Majority” means “the number one more than half” of the total number of members. AGO 93-140; see also 2002-41; 87-152; 87-132; 87-45; 86-110; and 83-174.

What is a “meeting”?

- If a quorum is present and a majority of the members voting vote in favor of a particular matter, abstentions from voting are to be counted as acquiescence with the votes of the majority, and the action will bind the body. AGO 82-43.

What is a “meeting”?

- Serial interactive communications (i.e., email, messaging apps)
  - If members of a public body communicate individually with one another about a topic, they may be conducting a “meeting” of which the public was not notified in violation of KOMA.

What is a “meeting”?

- Failure to notify the public of any “meeting” violates K.S.A. 75-4318(b)(“notice of the date, time and place of any regular or special meeting of a public body or agency…shall be furnished to any person requesting such notice.”).

What is a “meeting”?

- Serial interactive communications
  - **Hypothetical**: A constituent sends an email to all five members of the board of county commissioners. One board member replies by sharing both the original message and the board member’s comments with the other members.
  - Did a “meeting” as defined by KOMA occur?

What is a “meeting”?

- Serial interactive communications
  - **Answer**: No. Would have been a violation if the other members had further responded to the continuation of the thread.
    - “Should there be further interactive communications among a majority of the members concerning the business of the body, and there is an intent by any or all of the participants to reach agreement on a matter that would require binding action, those communications are subject to KOMA.” Kan. Att’y Gen. Op. 2009-22.

What is a “meeting”?

- Serial interactive communications
  - After that opinion was issued, the legislature amended KOMA.
  - “[I]nteractive communications in a series shall be open if they collectively involve a majority of the membership of the public body or agency, share a common topic of discussion concerning the business or affairs of the public body or agency, and are 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.”
    - K.S.A. 75-4318(f)

What is a “meeting”?

- Serial interactive communications
  - In an abundance of caution, members of any governing body should not hit “reply all” to messages addressed to a majority of the body’s members lest a discussion ensue that could arguably amount to a “meeting.”

What is not a “meeting”?

- Under K.S.A. 75-4318(g), KOMA expressly “shall not apply”:
  - 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; i.e.,
    - 1) Zoning boards. AGO 78-13.
    - 2) City grievance panels. AGO 91-31.
    - 3) Hearing panels. AGO 97-40.

What is not a “meeting”?

- Under K.S.A. 75-4318(g), KOMA expressly “shall not apply”:
  - To the prisoner review board when conducting parole hearings or parole violation hearings held at a correctional institution;
  - 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
  - If otherwise provided by state or federal law or by rules of the Kansas senate or house of representatives.

What is not a “meeting”?

- Staff meetings are not subject to KOMA; a body’s staff is not the “administrative body or agency as defined by the KOMA.” See AGO 99-22.

What is not a “meeting”?

- Generally, nonprofits are not subject to KOMA
- However, KOMA applies to a nonprofit corporation if:
  - the corporation receives or expends public funds;
  - the corporation is subject to control of governmental unit(s) (i.e., county hospitals under K.S.A. 19-4605); and
  - the corporation acts as a governmental agency in providing services or has independent authority to make governmental decisions. See AGO 2004-34 and AGO 94-99.

Kansas Open Meetings Act (KOMA)

- Binding action must be taken in open session
  - "…**[N]o binding action by…public bodies or agencies shall be by secret ballot**." K.S.A. 75-4318 (emphasis added).
  - "The purpose of this provision is to make public every official's vote on the public's business." AGO 86-176, citing *Olathe Hospital Foundation, Inc. v. Extendicare*, 217 Kan. 546, 562 (1975); see also AGOs 93-55; 81-106; and 79-167.
    - Binding action "connote[s] finality within the scope of the powers delegated." AGO 86-176.

Kansas Open Meetings Act (KOMA)

- KOMA only confers the right to attend and observe meetings, not make comments. AGO 2005-03.
  - Public comments may be regulated by ordinance under the forum doctrine (i.e., time, place, and manner).

Public comment

- KOMA only confers the right to attend and observe meetings, not to make comments. Kan. Att'y Gen. Op. 2005-03.
  - It is permissible for a public agency to prohibit public comment at its meetings entirely because there is no constitutional or statutory right to public comment.

Public comment

- But a “no public comment” policy can be politically problematic because the tradition of public comment in this country raises the public’s reasonable expectation that it be allowed a limited means to address elected officials at open meetings.

Public comment

- If a public body has a policy of allowing public comment, such policy must be applied in a manner consistent with the First Amendment
  - The Ninth Circuit has held that "The First Amendment requires a person's speech in a city council meeting must actually disrupt a meeting before that person may be removed from the meeting."

Public comment

- The following policy was deemed constitutional by the Ninth Circuit:
  - "It shall be unlawful for any person in the audience at a council meeting to…[e]ngage in disorderly, disruptive, disturbing, delaying or boisterous conduct, such as, but not limited to, handclapping, stomping of feet, whistling, making noise, use of profane language or obscene gestures, yelling or similar demonstrations, *which conduct substantially interrupts, delays, or disturbs the peace and good order of the proceedings of the council*." (emphasis added).

Virtual meetings

- Meetings may be conducted electronically (virtual conference, telephone) so long as notice and public access requirements are met. Kan. Att'y Gen. Op. 11-23.

Kansas Open Meetings Act (KOMA)

- Informal discussions between members of body before and after meetings may be a “meeting” under KOMA
  - Apply definition of “meeting” set forth in K.S.A. 75-4317a to determine if violation has occurred (i.e., was the informal gathering an “assembly in person…for the purpose of discussing the business or affairs of the public body or agency.”)

Notice of meeting

- “Notice of the date, time and place of any regular or special meeting” of a public body “shall be furnished to any person requesting such notice.” K.S.A. 75-4318(b).
  - Such request must be furnished annually to the body. K.S.A. 75-4318(b)(3).

Agenda

- Although the law does not require public bodies to create an agenda for their public meetings, “any agenda relating to the business to be transacted at such meeting shall be made available to any person requesting the agenda.” K.S.A. 75-4318(d).

Agenda

- "[A]ll topics to be discussed known at the time of the preparation" of the agenda are to be included. *Stevens v. City of Hutchinson*, 11 Kan. App. 2d 290, 293 (1986).
  - See also *Klein v. Johnson County Bd. of County Comm'rs*, 77 P.3d 1009 (table), 2003 WL 22176046 (Court of Appeals, 2003) (unpublished opinion) (commission violated agenda requirement because it planned to discuss a particular item at an upcoming meeting, declined to put that item on the agenda, but then discussed the item anyway)

Minutes

- Under KOMA, minutes are not required except to recess into executive session. See AGO 90-47; K.S.A. 75-4319(a).
  - But additional minutes may be required under local rule or ordinance.

Recess to executive session

- "Upon formal motion made, seconded and carried, all public bodies and agencies subject to the open meetings act may recess, but not adjourn, open meetings for closed or executive meetings." K.S.A. 75-4319(a).
  - Members of the body may recess for discussion of certain enumerated topics out of public view.
  - Permitted to invite individuals who would provide information to aid the discussion, but only if such invitations do not undermine the basis for the executive session (i.e., recess for "attorney-client" that includes a party who is not a client)

Recess to executive session

- Motions for recess "shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the public body or agency."
  - K.S.A. 75-4319(a).
- The motion for recess must be recorded "in its entirety."
  - Att'y Gen. Op. 2018-1.

Recess to executive session

- “Any motion to recess for a closed or executive meeting shall include:
- (1) *A statement describing the subjects to be discussed during the closed or executive meeting*;

Recess to executive session

- “Any motion to recess for a closed or executive meeting shall include:
- (1) *A statement describing the subjects to be discussed during the closed or executive meeting*;
- (2) the justification listed in subsection (b) for closing the meeting;

Recess to executive session

- "Any motion to recess for a closed or executive meeting shall include:
- (1) *A statement describing the subjects to be discussed during the closed or executive meeting*;
- (2) the justification listed in subsection (b) for closing the meeting; and
- (3) the time and place at which the open meeting shall resume." K.S.A. 75-4319(a)(emphasis added).

Recess to executive session

- Such “statement describing the subjects to be discussed during the closed or executive meeting must be more than a generic or vague summary, or a list of the subject(s) to be discussed.”
  - AGO 2018-1; see also Kautsch, M. *Largest Kansas counties grapple with closed-door meetings and public’s rights*, July 17, 2025.

Recess to executive session

- Statement describing what will be discussed need not “be so detailed that it negates the usefulness of a closed or executive meeting.”
  - “The determination of whether a motion to recess into a closed or executive meeting sufficiently describes the subject(s) to be discussed in a specific situation is a factsensitive question which must be determined on a case-by-case basis.”
  - AGO 2018-1.

Recess to executive session

- AG Kobach's office has found at least one public agency to have violated KOMA for failing to describe the subject(s) to be discussed. See Kansas Reflector, *Kansas attorney general concludes Junction City Commission broke open meeting law*, April 30, 2024.

Recess to executive session

- The 16 “justifications” for recess under K.S.A. 75-4319(b) “permitting certain subjects to be discussed behind closed doors were enacted on the basis that in certain instances the interests involved in preserving confidentiality outweigh the public's right to know.” AGO 88-25.

Recess to executive session

- The “justifications” for recess under K.S.A. 75-4319(b) include:
  - (1) To discuss personnel matters of nonelected personnel;
  - (2) for consultation with an attorney for the public body or agency which would be deemed privileged in the attorney-client relationship;
  - (4) to discuss data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;
  - (6) for the preliminary discussion of the acquisition of real property;

Recess to executive session

- (1) nonelected personnel
  - Must be to discuss an individual, not groups. AGO 88-25; 81-39; 80-102.
  - Topic must be related to an identifiable person; can't recess to discuss policy

Recess to executive session

- **Must stay on topic!!!**
  - But see *State of Kansas v. USD 305 et al.,* 13 K.A.2d 117 (1988) (discussion of exempt and nonexempt topics in executive session; separation burdensome and impractical, if not impossible).
    - "At what point discussion moves from permissible discussion to impermissible discussion of the policy itself will depend upon the facts." AGO 2009-21.
  - "Personnel" does not include independent contractors. AGO 2002-28; 87-169.

Recess to executive session

- (2) attorney client privilege
  - Privilege applies "(1) Where legal advice is sought (2) from a professional legal advisor in his capacity as such, (3) communications made in the course of that relationship (4) made in confidence (5) by the client…unless waived."
    - See K.S.A. 60-426 and *Cypress Media, Inc. v. City of Overland Park*, 268 Kan. 407, 418 (2000)(citations omitted).

Recess to executive session

- (2) attorney client privilege
  - Additionally, to apply during executive session:
    - The body's attorney must be present,
    - The communication must be privileged, and
    - No other third parties may be present. See AGO 92-56; 82-247; 82-176; 82-130; 78-303.
    - Cannot be used to discuss letter received from attorney if the attorney is not present. AGO 86-162.

Recess to executive session

- (4) trade secrets
  - Must be for data that is truly confidential in nature. See K.S.A. 60-3320(4); *Southwestern Bell Telephone Co. v. KCC*, 6 K.A.2d 444, 457 (1981), rev. den. 230 Kan. 819 (1981); *All West Pet Supply v. Hill's Pet Products*, 840 F.Supp. 1433, 1437 (Kan. 1993).

The Kansas Supreme Court has established criteria to determine whether information constitutes trade secrets:

> "An exact definition of a trade secret may not be possible, but factors to be considered in recognizing a trade secret are: (1) the extent to which the information is known outside the business, (2) the extent to which it is known to those inside the business, i.e., by the employees, (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information, (4) the savings effected and the value to the holder in having the information as against competitors, (5) the amount of effort or money expended in obtaining and developing the information, and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

- AGO 1988-148, citing *Koch Engineering Co. v. Faulconer*, 227 Kan. 813, 826 (1980).

Recess to executive session

- (4) trade secrets
  - “[D]iscussions which do not focus on confidential financial data or trade secrets do not fall under the exception.”
  - “When in doubt, members of the Commission should remember that exceptions to the open meetings law are interpreted narrowly.”
  - “[I]f the business does not request that the matter be privately discussed, discussion should be held in an open meeting as the exception was designed to protect private business, not the public body.”
    - AGO 1988-148, p. 6.

Recess to executive session

- (6) acquisition of real property
  - Applies to acquisition only, not sale; sale must be discussed in open meeting. AGO 87-91.
  - This exception can be used only when the primary focus of the discussion is real property; negotiating strategy alone is insufficient. AGO 89-92.

Recess to executive session

- **Hypothetical**: Is the following motion to recess compliant with KOMA?
  - “Board member #1 moved, seconded by board member #2, to go into executive session for ten minutes at 9:15 a.m. to discuss matters of nonelected personnel to assure compliance with the policies and laws with board clerk present.”

Recess to executive session

- **Answer**: Did the statement “describe the subjects to be discussed”?

Recess to executive session

- **Answer**: Did the statement "describe the subjects to be discussed"?
  - NO. Subject was vague and generic
    - "The plain language of K.S.A. 2017 Supp. 75-4319(a) adding the word 'describing' clearly indicates that the Legislature wanted more than a generic or vague summary of what is to be discussed during a closed or executive meeting." AGO 18-1.

Recess to executive session

- “No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.” K.S.A. 75-4319(c).

Recess to executive session

- Resuming open session
  - "[A] recess may not stretch across multiple days," and "a closed or executive meeting must be held contemporaneously with an open meeting." Kan. A'tty Gen. Op. 2017-20.

Recess to executive session

- Public bodies wishing to extend closed-door discussions must return to open session and make a new motion to recess.

Recess to executive session

- Example: KOMA violation?
  - Commission member #1 moved, seconded by commission member #2, to go into executive session for ten minutes at 9:15 a.m. to discuss matters of nonelected personnel to assure compliance with the policies and laws with County Clerk present
  - Commission discussed bills submitted by contract attorneys - the rate of payment and impact on the district court clerk's budget

Recess to executive session

- Example: KOMA violation?
  - Motion was a summary instead of a complete motion
  - Subject was vague and generic; did not give an accounting of what was to be discussed or how subject related to nonelected personnel
  - Location where the open meeting was to resume was not provided
  - Justification recognized by the KOMA but commission discussed matters that did not actually involve nonelected personnel

Location

- “It is declared hereby to be against the public policy of this state for any such meeting to be adjourned to another time or place in order to subvert the policy of open public meetings as pronounced in [K.S.A. 75-4317](a).”
  - K.S.A. 75-4317(b).

Location

- Meeting location must not be “inaccessible” to the public.
  - *Stevens v. City of Hutchinson*, 11 Kan. App. 2d 290, 292 (1986); see also AGOs 2011-23; 86-153 (board meeting at convention center in Kansas City, MO was not “inaccessible”); 82-133 (meeting at resort in Colorado mountains was “inaccessible”); 80-148; 79-253.

Location

- Executive session
  - “A public body or public agency has the discretion to designate the location of a closed or executive meeting if the location of the closed or executive meeting allows the public body or public agency to conduct the closed or executive meeting contemporaneously with the open meeting.”
    - AGO 17-20.

KOMA enforcement

- Actions taken in violation of KOMA "shall be voidable"
  - "[A]ny binding action which is taken at a meeting not in substantial compliance with the provisions of the open meetings act shall be voidable in any action brought by the attorney general or county or district attorney in the district court of the county in which the meeting was held **within 21 days** of the meeting, and the court shall have jurisdiction to issue injunctions or writs of mandamus to enforce the provisions of the open meetings act."
    - K.S.A. 75-4320(a)(emphasis added).

KOMA enforcement

- In an enforcement action brought by the AG, DA, or CA, court may also fine the member of the body who violated the law up to $500 for each violation. K.S.A. 75-4320(a).
- AG's office has broad investigative and enforcement power. See K.S.A. 75-4320b.
- Private enforcement action also available. K.S.A. 75-4320a.

Recording Meetings

- Public agencies or attendees may record such agencies' meetings, subject to reasonable regulations by the public body.
  - "The use of cameras, photographic lights and recording devices shall not be prohibited…, but such use shall be subject to reasonable rules designed to insure the orderly conduct of the proceedings at such meeting." K.S.A. 75-4318(e).

Live Streams of Meetings

- “A public body or agency that voluntarily elects to live stream their meeting on television, the internet or any other medium shall ensure that all aspects of the open meeting are available through the selected medium for the public to observe. An unintentional technological failure or an action taken by the provider of the selected medium that disrupts or prevents such live stream shall not constitute a violation of this subsection.”
  - K.S.A. 75-4318(j), as amended by 2025 HB 3134, Sec. 5

KORA/KOMA Statistics

- “On or before October 15, of each year, the county or district attorney of each county shall report to the attorney general all complaints received during the preceding fiscal year concerning violations of the open records act and open meetings act and the disposition of each complaint.”
- “The attorney general shall…publish a yearly abstract of such information listing by name the public agencies which are the subject of such complaints or investigations.”
  - K.S.A. 75-753

Probable Cause Affidavits

- PCAs are documents drafted by law enforcement and delivered to the judge that contain allegations constituting "probable cause to believe both that a crime has been committed and that the defendant has committed it." K.S.A. 22-2302(a).
  - The information law enforcement relies on in order to curtail freedom; i.e., arrest someone under K.S.A. 22-2302(c) or search someone's home under K.S.A. 22-2502(e).

Probable Cause Affidavits

- These documents are not available under KORA but are available under the Kansas code of criminal procedure.

Probable Cause Affidavits

- Probable cause affidavits “shall be made available” to “any person, when requested, in accordance with” statutory requirements.
- Request is made by “filing such request with the clerk of the court.” See K.S.A. 22-2302(c)(2); K.S.A. 22-2502(e)(2).
  - Form to file request is provided by the Kansas Judicial Council: https://www.kansasjudicialcouncil.org/legal-forms/requests-disclosure-warrant-information/request-disclosure-affidavit-or-sworn-testimony

Probable Cause Affidavits

- Both defendant and prosecution can file motions, under seal, opposing the disclosure of the affidavit, or recommending disclosure with redactions. See, e.g., K.S.A. 22-2302(c)(3).
  - Bases for redaction and seal include whether release of affidavit would result in:
    - Jeopardizing the physical, mental or emotional safety or well-being of a victim, witness, confidential source or undercover agent, or cause the destruction of evidence
    - Interfering with any prospective law enforcement action, criminal investigation or prosecution
    - Endangering the life or physical safety of any person
    - A clearly unwarranted invasion of personal privacy

Probable Cause Affidavits

- Judge can order disclosure of the affidavit in its entirety, disclose it with redactions, or order it remained sealed
- Judge has 10 days to act on the request

Probable Cause Affidavits

- Now that the PCA access statutes have been on the books a few years, and combined with high-profile disclosures in 2021, it may be fair to say that Kansas courts are getting used to disclosing these records
  - Kansas Reflector, *Kansas Senate majority leader had 0.17 blood alcohol level in wrong-way pursuit*, April 8, 2021; see also *State v. Suellentrop*, Order Pursuant to K.S.A. 22-2302 and arrest affidavit, Shawnee County District Court Case No. 2021-CR-58
  - Fox 4 KC, 'I'm going to unleash the wrath of God on you': Court papers detail charges against Kansas Rep. Samsel, May 25, 2021.

The three-legged stool of government transparency

- Three legs: Open meetings, open records, and public notice
- Essential elements of public notice:
  - Accessibility
  - Independence
  - Verifiability
  - Archivability
    - Creates a record of the notice

The three-legged stool of government transparency

- In many cases, newspapers have been building their audiences for decades
  - Expected source of public notice information

The three-legged stool of government transparency

- At the same time, newspapers serve as a repository for information about local events that is irreplicable on the world wide web
  - We find things in newspapers we weren't expecting to see.
  - On the internet, we search for specific information and ignore everything else.

Open Government Crash Course: Access to Public Records and Meetings in Kansas

By Maxwell E. Kautsch, Attorney at Law
Kautsch Law, LLC
810 Pennsylvania St., Ste. #207
Lawrence, KS 66044
(785) 840-0077
maxk@kautschlaw.com
kautschlaw.com
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