



August 28, 2024

VIA EMAIL

Office of the Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612
Email: ogeu@ag.ks.gov

Re: Kansas Open Records Act Complaint:

We write on behalf of the Kansas Chapter of Americans for Prosperity Foundation (“AFPF”), a 501(c)(3) nonprofit organization committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society.¹

AFPF respectfully requests the Office of the Attorney General require the Kansas Department of Commerce (“Commerce”) to produce the records responsive to AFPF’s Kansas Open Records Act (“KORA”) request [submitted over seven months ago on January 5, 2024](#). Commerce has not only failed to produce those records, but the agency has not responded to a single inquiry about the status of the request since its original reply on January 9, 2024.

The AFPF KORA Request

Pursuant to the KORA, Kan. Stat. Ann. § 45-215 *et seq.*, [AFPF requested](#) the following reports that Commerce is required to prepare under Section 10 of Attracting Powerful Economic Expansion Act (“APEX”) Act, Kan. Stat. Ann. § 74-50 on January 5, 2024 (request attached as Exhibit 1):

1. All quarterly reports prepared for the chairperson of the Senate Committee on Commerce or the House Committee on Commerce, Labor, and Economic Development pursuant to the APEX Act.
2. All annual reports prepared for the Office of the Governor, Senate Committee on Commerce, Senate Committee on Assessment and Taxation, House Committee on Taxation, or the House Committee on Commerce, Labor, and Economic Development pursuant to the APEX Act.

Department of Commerce Fails to Provide Any Records or Updates

AFPF received its first and only response from Commerce on January 9, 2024 (email chain attached as Exhibit 2). In that email, Commerce advised AFPF that it “is in the process of reviewing of reviewing [sic] its files to locate potentially responsive records” and that the agency will “provide an update containing the estimate of fees applicable to this KORA request.” To date, Commerce has not provided any further information. AFPF followed up with Commerce seeking status updates on February 12, 2024, May 3, 2024, and August 2, 2024. Commerce did not reply.

¹ See AMS. FOR PROSPERITY FOUND., <https://americansforprosperityfoundation.org/> (last visited Aug 26, 2024).

Relief Requested

AFPF requests that the Kansas Department of Commerce search and provide the responsive records in electronic format within the next 10 working days. Further, we again respectfully request the Attorney General's Office open an investigation into how Commerce responds to KORA requests—including AFPF's request at issue here and a previous request that is the subject of another, outstanding [KORA complaint number CV-22-002343](#). AFPF's experience, and that of other KORA requesters,² suggests that Commerce has no interest in complying with the KORA. The agency must be held accountable.

Contact Information

If you have any questions about this KORA complaint, please contact us at KSchmidt@afphq.org and EPatton@afphq.org. Thank you for your attention to this matter.



ELIZABETH PATTON
STATE DIRECTOR, AFPF KANSAS



KEVIN SCHMIDT
DIRECTOR OF INVESTIGATIONS, AFPF

² See e.g., *What is Kansas Department of Commerce hiding from public scrutiny?*, THE SENTINEL, Jan. 8, 2020, available at <https://sentinelksmo.org/what-is-kansas-department-commerce-hiding-public-scrutiny/>.

EXHIBIT

1



January 5, 2024

VIA EMAIL

Kansas Department of Commerce
Sam Blasi, Attorney
1000 SW Jackson, Suite 100
Topeka, KS 66612
Email: sam.blasi@ks.gov

Re: Kansas Open Records Act Request

Dear KORA Officer:

We write on behalf of the Kansas Chapter of Americans for Prosperity Foundation (“AFPF”), a 501(c)(3) nonprofit organization committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society.¹ Pursuant to the Kansas Open Records Act (“KORA”), Kan. Stat. Ann. § 45-215 *et seq.*, AFPF hereby requests the following annual and quarterly reports required to be created under Section 10 of the Attracting Powerful Economic Expansion Act (APEX) Act, Kan. Stat. Ann. § 74-50 *et seq.*:

1. All quarterly reports prepared for the chairperson of the Senate Committee on Commerce or the House Committee on Commerce, Labor, and Economic Development pursuant to the APEX Act.
2. All annual reports prepared for the Office of the Governor, Senate Committee on Commerce, Senate Committee on Assessment and Taxation, House Committee on Taxation, or the House Committee on Commerce, Labor, and Economic Development pursuant to the APEX Act.

Request for a Public Interest Fee Waiver

AFPF requests a waiver of any and all applicable fees. The KORA gives agencies discretion on whether to charge fees, noting that a “**public agency may charge** and require advance payment of a fee for providing access to or furnishing copies of public records, subject to K.S.A. 45-219.” Kan. Stat. Ann. § 45-218(f) (emphasis added).

AFPF’s KORA request is in the public interest because the records requested would shed light on the activities of government and AFPF intends to educate the public with the results of this KORA request. Further, AFPF is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, and it has no commercial interest in making this request.

¹ See AMS. FOR PROSPERITY FOUND., <https://americansforprosperityfoundation.org/> (last visited Jan. 3, 2024).

In addition, the records responsive to this request should not be voluminous and can be provided with less than one hour of staff time.

Record Production and Contact Information

To facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, AFPF requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit. If you have any questions about this request, please contact us at KSchmidt@afphq.org and EPatton@afphq.org. Thank you for your attention to this matter.



ELIZABETH PATTON
STATE DIRECTOR, AFPF KANSAS



KEVIN SCHMIDT
DIRECTOR OF INVESTIGATIONS, AFPF

EXHIBIT

2

Re: KORA Request

Kevin Schmidt <KSchmidt@afphq.org>

Fri 8/2/2024 9:10 AM

To: Sam Blasi [KDC] <Sam.Blas@ks.gov>
Cc: Elizabeth Patton <EPatton@afphq.org>

Hi Sam, we still haven't heard anything regarding this request. Could you provide us with an update?

Thank you,
Kevin

From: Kevin Schmidt
Sent: Friday, May 3, 2024 8:58 AM
To: Sam Blasi [KDC] <Sam.Blas@ks.gov>
Cc: Elizabeth Patton <EPatton@afphq.org>
Subject: RE: KORA Request

Hi Sam, just wanted to check in on the status of this request. Let me know if you have any questions.

Thank you,
Kevin

From: Kevin Schmidt <KSchmidt@afphq.org>
Sent: Monday, February 12, 2024 1:13 PM
To: Sam Blasi [KDC] <Sam.Blas@ks.gov>
Cc: Elizabeth Patton <EPatton@afphq.org>
Subject: Re: KORA Request

Hi Sam,

I'm not seeing any publicly available records through the Kansas Legislature. Has Commerce identified the responsive records? I suspect it shouldn't be too voluminous because not enough time has passed for more than a couple of reports for each request item.

Thank you,
Kevin

From: Sam Blasi [KDC] <Sam.Blas@ks.gov>
Sent: Tuesday, January 9, 2024 3:22 PM
To: Kevin Schmidt <KSchmidt@afphq.org>
Subject: RE: KORA Request

Mr. Schmidt,

Thank you for contacting the Kansas Department of Commerce ("Commerce") Pursuant to K.S.A. 45-218(d), we are writing concerning your Kansas Open Records Act ("KORA"), K.S.A. 45-215 *et seq.*, request received by our office via email on Friday, January 5, 2024. In that email, you requested:

1. All quarterly reports prepared for the chairperson of the Senate Committee on Commerce or the House Committee on Commerce, Labor, and Economic Development pursuant to the APEX Act.
2. All annual reports prepared for the Office of the Governor, Senate Committee on Commerce, Senate Committee on Assessment and Taxation, House Committee on Taxation, or the House Committee on Commerce, Labor, and Economic Development pursuant to the APEX Act.

Commerce is in the process of reviewing of reviewing its files to locate potentially responsive records. This process takes time. While we locate potentially responsive records, please familiarize yourself with our fee schedule located at <https://www.kansascommerce.gov/contact/kora/>. Commerce requires prepayment of fees prior to providing responsive records. Additionally, there may be publicly available responsive records through the Kansas Legislature. To avoid fees, you may want to consider that. Once review is complete, I will provide you an update containing the estimate of fees applicable for this KORA request.

Please do not hesitate to contact me with any questions or concerns you may have.

Thank you for contacting Commerce,

Sam



COMMERCE



Samuel C. Blasi JD
MBA
Attorney
sam.blasi@ks.gov
w (785) 296-5473
c (785) 213-2296
kansascommerce.gov

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From: Kevin Schmidt <KSchmidt@afphq.org>
Sent: Friday, January 5, 2024 11:56 AM
To: Sam Blasi [KDC] <Sam.Blasl@ks.gov>
Cc: Elizabeth Patton <EPatton@afphq.org>
Subject: KORA Request

EXTERNAL: This email originated from outside of the organization. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Sam,

Please find attached KORA request. Let Elizabeth or I know if you have any questions.

Thank you and have a good weekend,

Kevin Schmidt
Director of Investigations
Americans for Prosperity Foundation
kschmidt@afphq.org
571-329-4234



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