

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT
COURT NO. 7


MEREDITH CORPORATION,)
d/b/a KCTV-5,)
)
Plaintiff,)
)
v.)
)
FRANK DENNING, IN HIS OFFICIAL)
CAPACITY AS SHERIFF OF)
JOHNSON COUNTY, KANSAS,)
Serve: 125 N. Cherry St.)
Olathe, Kansas 66061)
)
Defendant.)

Case No. 07CV4381
Chapter 60

**VERIFIED PETITION FOR INJUNCTIVE RELIEF
AND ATTORNEY'S FEES**

Plaintiff Meredith Corporation, d/b/a KCTV-5, for its cause of action against
Defendant Johnson County, Kansas, states as follows:

1. Plaintiff Meredith Corporation, d/b/a KCTV-5 ("KCTV-5"), is an Iowa corporation, authorized to do business in the state of Kansas.
2. KCTV-5 owns and operates the CBS television affiliate serving the greater Kansas City area, including Johnson County, Kansas.
3. Defendant Frank Denning is the Sheriff of Johnson County, Kansas.
4. Defendant is an elected "officer" of Johnson County, Kansas and is therefore a "public agency" within the meaning of K.S.A. 45-217(f)(1), and is therefore generally subject to the Kansas Open Records Act ("KORA"), K.S.A. 45-215, et seq.

CLERK OF DISTRICT COURT
JOHNSON COUNTY, KS
2007 JUN -4 PM 3:44 

2007 JUN 4 PM 3:44

5. On May 8, 2007, Chris Koeberl, an employee of KCTV-5, made a request to Johnson County, Kansas Sheriff's Deputy Tom Erickson for a copy of: "Time stamped copies of all entries and exits from the secured parking structure at the Johnson County Court House from the key card issued to District Attorney Phil [sic] Kline. This would include the dates from January 11th 2007 to May 8th 2007." (See Letter from Chris Koeberl to Tom Erickson, attached hereto as Exhibit A.)

6. The parking records of District Attorney Phill Kline are "public records" within the meaning of K.S.A. 45-217([g])(1).

7. On May 10, 2007, Cynthia C. Dunham, Assistant County Counselor for Johnson County, advised Mr. Koeberl that his "request is denied based upon K.S.A. 45-221(a)(12)." (See Letter from Cynthia Dunham to Chris Koeberl, May 10, 2007, attached hereto as Exhibit B.)

8. On May 23, 2007, the undersigned counsel wrote Ms. Dunham and asked her to reconsider the denial of Mr. Koeberl's request. (See Letter from Bernard J. Rhodes to Cynthia Dunham, May 23, 2007, attached hereto as Exhibit C.)

9. On May 29, 2007, Ms. Dunham denied the requested reconsideration. (See Letter from Cynthia Dunham to Bernard J. Rhodes, attached hereto as Exhibit D.)

10. K.S.A. 45-221(a)(12) provides as follows:

(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the

generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(Emphasis added).

11. The disclosure of the parking records of District Attorney Phill Kline will not “jeopardize security of [any] public agency, building or facility.”

12. To the contrary, the disclosure of the parking records of District Attorney Phill Kline will reveal nothing more than what any interested citizen could personally observe by standing on the public sidewalks adjacent to N. Cherry St. and observing cars enter and exit the sole entrance/exit from the parking facility in the courtyard of the Johnson County, Kansas Courthouse.

13. Furthermore, the parking facility in the courtyard of the Johnson County, Kansas Courthouse is visible from numerous windows inside the courthouse, again allowing any interested citizen to observe which cars are parked there and which cars are not parked there.


14. Because Defendant has no good faith reason for asserting that disclosure of the parking records of District Attorney Phill Kline will jeopardize security of any public agency, building or facility, Defendant’s refusal to provide the parking records of District Attorney Phill Kline is not in good faith and is without a reasonable basis in fact or law, thus entitling KCTV-5 to a mandatory award of attorneys’ fees under K.S.A. 45-222(c).

WHEREFORE, Plaintiff Meredith Corp., d/b/a KCTV-5, requests the Court to enter temporary and permanent injunctive relief, by ordering Defendant Frank Denning,

Sheriff of Johnson County, Kansas, to make available for inspection and copying the parking records of District Attorney Phill Kline, together with Plaintiff's attorneys' fees and costs, and such other and further relief as the Court deems appropriate.

Respectfully submitted,

LATHROP & GAGE L.C.

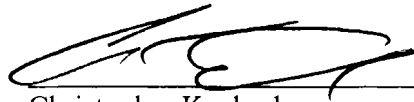
By  _____
Bernard J. Rhodes KS #15716
2345 Grand Blvd., Suite 2400
Kansas City, Missouri 64108
(816) 292-2000 – Telephone
(816) 292-2001 - Facsimile

Attorneys for Plaintiff

VERIFICATION

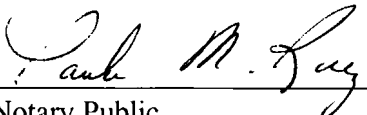
STATE OF KANSAS)
COUNTY OF Johnson) SS.

I, Christopher Koeberl, swear upon my oath that I have the read the VERIFIED PETITION FOR INJUCTIVE RELIEF AND ATTORNEY'S FEES and that the statements set forth therein are true and correct to the best of my personal knowledge, information and belief.

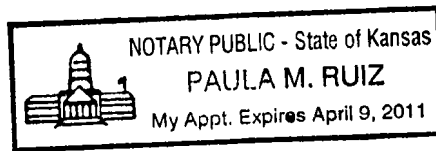

Christopher Koeberl

Executed this 4th day of June, 2007.

Subscribed and sworn to before me this 4th day of June, 2007.


Notary Public

My commission expires: 4-9-2011





.....
P.O. Box 5555 • Kansas City, MO • 64109-0156 • 913.077.5555 • kctv5@kctv5.com

Date: 5/08/07
Name: Chris Koeberl
Title: Investigative Producer
Email: ckoeberl@kctv5.com
Phone: 913.677-7114

VIA FACSIMILE

Name: Tom Erickson
Title: Public Information Officer
Agency: Johnson County Sheriff's Office

Dear: Mr. Erickson

Please forward a copy of the following public records:

Time stamped copies of all entries and exits from the secured parking structure at the Johnson County Court House from the key card issued to District Attorney Phil Kline. This would include the dates from January 11th 2007 to May 8th 2007.

This is a request for public records filed in accordance with the State of Kansas Open Records Act K.S.A. 45-215, et seq. Any information received will not be used for commercial purposes.

If you or your office believes the above requested records are not available under the Kansas Open Records Act, please respond in writing within three (3) days and cite all specific instances in the Act which exclude these documents.

Since this is a matter of public interest, I request that all fees be waived in association with this request. If the cost of preparing the above requested records exceeds \$25, please contact me before proceeding.

Sincerely,

Chris Koeberl

EXHIBIT A

SEARCHED 5/8/07 14:00:10



JOHNSON COUNTY LEGAL DEPARTMENT

CYNTHIA C. DUNHAM
ASSISTANT COUNTY COUNSELOR
(913) 715-1852
CYNTHIA.DUNHAM@JOCOGOV.ORG

May 10, 2007

Chris Koeberl
KCTV5
P.O. Box 5555
Kansas City, Mo. 64109-0156

RE: Kansas Open Records Request

Dear Mr. Koeberl:

Your May 8, 2007 letter to Deputy Tom Erickson requesting "time stamped copies of all entries and exits from the secured parking structure at the Johnson County Court House from the key card issued to District Attorney Phill Kline" has been forwarded to me for a response.

Please be advised that your request is denied based upon K.S.A. 45-221(a)(12), which provides that a public agency is not required to disclose the following records:

"Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility."

Your request seeks records of the security system in the Johnson County Courthouse. The key cards are an integral part of the security system installed and operated at the Courthouse for the purpose of protecting employees, litigants, witnesses, and all others who use the Courthouse. Disclosure of records pertaining to this system would jeopardize the security of the building and the security of the public agencies and divisions that operate in the building. As such, your request is denied.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cynthia Dunham".

Cynthia Dunham
Assistant County Counselor

JOHNSON COUNTY ADMINISTRATION BUILDING
Phone: (913) 715-1900

111 South Cherry Street, Suite 3200
Fax: (913) 715-1873

Olathe, Kansas 66061-3486
TDD: (800) 768-3777

EXHIBIT B

20070508 10:13



BERNARD J. RHODES
(816) 460-5508
EMAIL: BRHODES@LATHROPGAGE.COM
WWW.LATHROPGAGE.COM

2345 GRAND BOULEVARD
SUITE 2800
KANSAS CITY, MISSOURI 64108-2684
(816) 292-2000, FAX (816) 292-2001

May 23, 2007

VIA FACSIMILE (913-715-1873)

Ms. Cynthia Dunham
Assistant County Counselor
Johnson County Administration Bldg.
111 South Cherry Street, Suite 3200
Olathe, KS 66061-3486

Re: Denial of Access to Public Records Under the Kansas Open Records Act

Dear Ms. Dunham:

Your May 10, 2007 letter to Chris Koeberl denying KCTV-5 access to "time stamped copies of all entries and exits from the secured parking structure at the Johnson County Court House from the key card issued to District Attorney Phill Kline" under the Kansas Open Records Act ("KORA") has been forwarded to me.

Contrary to your suggestion, the security exemption to KORA, found at K.S.A. 45-221(a) (12), does not apply to this request. Disclosure of the specific records sought by KCTV-5 would not jeopardize security of the Johnson County Courthouse or District Attorney Kline. KCTV-5 does not seek security information or procedures of the Courthouse facility, nor does it seek plans, drawings, or specifications of the Courthouse building. The only records requested are the entry and exit times of a single County employee, District Attorney Phill Kline. Other jurisdictions have provided such parking records on public employees—including judges—without any claim of security risk from such disclosure.

KORA was passed to encourage public confidence in government by increasing the access of the public to government and its decision-making processes. The on site work hours maintained by District Attorney Kline are presumably an essential part of the daily functioning of the Johnson County District Attorney's Office, and knowledge of this information is integral to the public's ability to assess the decision-making processes and performance of Mr. Kline and the public agency he serves. KORA is liberally construed to promote this policy of openness, and public records are open for inspection by any person unless the record otherwise falls within an exemption under the Act. K.S.A. 45-216 (a). In addition, when a request for disclosure is denied, the burden is on the public agency opposing disclosure to show that requested records fit within a

EXHIBIT C

CC 1903721v1

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Ms. Cynthia Dunham
May 23, 2007
Page 2


statutory exemption. Meeting this burden requires more than conclusory language or arguments of counsel. A detailed factual record must demonstrate that a specific exemption applies to the documents requested. *Cypress Media, Inc. v. City of Overland Park*, 268 Kan. 407, 417 (2000). Thus, in order to properly invoke an exemption to KORA, the County will need to provide a more detailed factual account of why time stamped copies of entries and exits from Mr. Kline's key card jeopardize the security of the Johnson County Courthouse or the agencies that operate in the building. The blanket statement that "disclosure of records pertaining to this system would jeopardize the security of the building and the security of the public agencies and divisions that operate in the building," is insufficient to place the requested records within the security exemption.

In addition, K.S.A. 45-221(d) requires a public agency to separate or delete any material that falls within an exemption to the general principle of disclosure and "make available to the requester that material in the public record which is subject to disclosure." As such, even if disclosure of any information covered by KCTV-5's request would jeopardize security of the agency or facility, Johnson County must redact that information and provide KCTV-5 with any remaining data in the records which does not pose a security threat. Therefore, the County must provide KCTV-5 with at least the dates of Mr. Kline's entries and exits from the parking structure and the total hours between when Mr. Kline enters and exits the parking structure on each such day, as well as all other clearly non-exempt information.

Please provide KCTV-5 with all the information they have requested under the KORA. To the extent the County sticks by its claimed KORA exemption, please provide a detailed factual rationale for the applicability of that exemption. In addition, please provide all non-exempt information as soon as possible. To the extent the County costs will exceed \$250 please let me know in advance of incurring such costs to be charged to KCTV-5. Please feel free to contact me with any further questions pertaining to this matter.

Very truly yours,

LATHROP & GAGE L.C.

By: 
Bernard J. Rhodes



JOHNSON COUNTY LEGAL DEPARTMENT

CYNTHIA C. DUNHAM
ASSISTANT COUNTY COUNSEL OR
(813) 715-1852
CYNTHIA.DUNHAM@JOCOGOV.ORG

May 29, 2007

VIA FACSIMILE (816)292-2001
Bernard J. Rhodes
LATHROP & GAGE
2345 Grand Boulevard
Suite 2800
Kansas City, Missouri 64108

Re: Kansas Open Records Act Request

Dear Mr. Rhodes:

I received your May 23, 2007 letter regarding KCTV-5's request for access/key card records pertaining to the Johnson County District Attorney. While we appreciate the arguments set forth in your letter, we disagree with your statement that Johnson County's explanation for non-disclosure under the Kansas Open Records Act is insufficient. As was already stated in my previous letter, the security system in the Courthouse is operated for the purpose of protecting all persons who use the Courthouse. As part of that system, a secured parking area and entry is provided for certain individuals who have offices located in the Courthouse. Johnson County provides this enhanced security to the district court judges and the District Attorney because of the nature of the positions they hold. Protecting these individuals is essential to protecting the functions of the public agencies in which they operate and uphold. The security provided to these individuals is an integral part of the security of their respective public agencies.

Your letter attempts to dispose of the County's security concerns by essentially stating that KCTV-5 is seeking this information for non-security related reasons. You claim the public has a right to know the hours worked by the District Attorney and suggest that the public's right somehow overrides KORA's security exception. However, the security exception in K.S.A. 45-221(a)(12) is not superseded by other non-security related concerns. Moreover, the justification you offer does not correlate with your request for access/key card records. Such records simply reflect entry to and from a secured parking area and the Courthouse. They do not reflect the hours worked by key card holders. Further, in the event a key card holder chooses to use a public entrance to and from the Courthouse, no record is generated by the County's security system. If you are seeking records that reflect the hours worked by the District Attorney, either on- or off-site, then you should make a KORA request for any such records and it should be directed to the District Attorney. Please understand that we do not know if such records even exist.

The records of entry and exit for the secured parking area are generated as part of the Courthouse security system, are maintained in the security system records, and are used by the County for security purposes. They do not exist for any other purpose. The release of such

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NO. 730 P. 2

EXHIBIT D

MAY 29 2007 2:34PM

2007-05-29 09:18

Bernard J. Rhodes
May 29, 2007
Page 2

records would seriously undermine, if not completely nullify, the intended purpose of the entryway and would potentially expose those individuals authorized to use the entry, and ultimately the public agency within which they work, to the risks that the secured entryway was intended to protect against. For these reasons and the reasons set forth in my May 10, 2007 letter, KCTC-5's request for key card records is denied under K.S.A. 45-221(a)(12).

If you have any questions, please feel free to contact me.

Sincerely,



Cynthia Dunham
Assistant County Counselor