



June 5, 2024

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RE: KORA request for records related to the death of Carter Tolbert

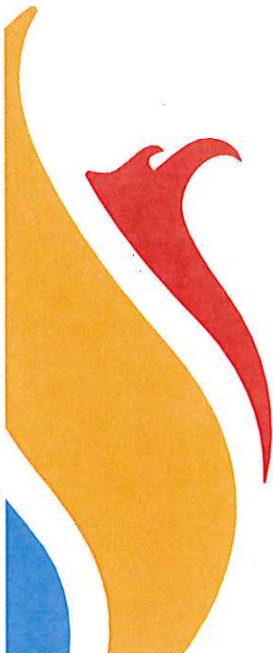
Dear Mackenzie:

This is our final response to your April 19, 2024, letter, which requested that the City of Lawrence reconsider the Lawrence Police Department's February 27, 2024, response to a KORA request your colleague at *The Lawrence Times*, Maya Hodison, made that same date. To recap, Maya sought "any and all records pertaining to the investigation into . . . the death of Carter Tolbert." LPD declined to provide Maya the requested records, pursuant to K.S.A. 2023 Supp. 45-221(a)(10)(A) and 45-219. You challenged the City's characterization of the responsive records as "criminal investigation records," primarily because LPD did not generate a Kansas Standard Offense Report (KSOR) related to Carter Tolbert's death.

In fact, not every criminal investigation results in creation of a KSOR. The lack of a KSOR neither disproves that LPD undertook a criminal investigation, nor negates that the records LPD compiled while investigating Carter Tolbert's death were – and still are – criminal investigation records. Please note that investigations do not always determine whether a crime was committed; at the same time, they may not eliminate that possibility. Regardless, where no offense is identified, no KSOR is completed. Nonetheless, records compiled remain "criminal investigation records."

The case of *Seck v. City of Overland Park*, 29 Kan. App. 2d 256 (Kan. Ct. App. 2000) is instructive on this issue. It involved a KORA request for records concerning the Overland Park Police Department's investigation into the death of a former county commissioner, who was found dead in a parking lot; OPPD determined the death was a suicide. OPPD denied the KORA request on the basis of the criminal investigation records exception in K.S.A. 1999 Supp. 45-221(a)(10). The relevant language of that exception remains the same today; see K.S.A. 2023 Supp. 45-221(a)(10).

The *Seck* court focused on the definition of "criminal investigation records" within the KORA – at that time located in K.S.A. 1999 Supp. 45-217(b) – which included records of a criminal justice agency "compiled in the process of preventing, detecting or investigating violations of criminal law." The plaintiff in the case argued "that because



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the death was declared a suicide, the investigation was not designed to unearth a violation of criminal law.” 29 Kan. App. 2d 256, 258. The court rejected that argument:

Until a death has been declared a suicide, it may be a potential homicide. Therefore, a police investigation of a death, even when it is ultimately declared a suicide, may contain names of innocent individuals who were suspects or merely informants. Considering the legislative intent behind the criminal investigation exception, the Overland Park Police Department investigation of [the former commissioner’s] death qualifies as “the process of preventing, detecting or investigating violations of criminal law.” The defendants are not compelled by the KORA to disclose the records.

Id. at 258.

The definition of “criminal investigation records” has expanded since the *Seck* ruling. As relevant to your correspondence, “criminal investigation records” means:

- (1) Every audio or video recording made and retained by law enforcement using a body camera or vehicle camera as defined by K.S.A. 45-254, and amendments thereto; and
- (2) 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. 2023 Supp. 45-217(e).

Notwithstanding the Sedgwick County District Court ruling that your letter referenced, we believe LPD’s investigative records related to Carter Tolbert’s death are squarely within KORA’s definition of “criminal investigation records,” and that it is not in the public’s interest that they be disclosed. **In fact, having reviewed the records, we believe they warrant protection on the basis of not only K.S.A. 2023 Supp. 45-221(a)(10)(A), but also K.S.A. 2023 Supp. 45-221(a)(3), K.S.A. 2023 Supp. 45-221(a)(5), K.S.A. 2023 Supp. 45-221(a)(10)(B), K.S.A. 2023 Supp. 45-221(a)(10)(E), K.S.A. 2023 Supp. 45-221(a)(20), and K.S.A. 2023 Supp. 45-221(a)(30).** In light of that conclusion, we do not believe K.S.A. 45-219 – which your letter argues is inapplicable – even needs to be considered.

Finally, we want to address a portion of your April 19th letter that includes misinformation; it states:

“As you may know, [Carter Tolbert’s mother, Ilene Tolbert] made a KORA request last summer for records related to her son’s death. But like Ms. Hodison, Ms. Tolbert was denied access under K.S.A. 45-221(a)(10). The

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city suggested that if Ms. Tolbert wanted to see the records she had requested, her only recourse would be 'civil litigation.'"

Ms. Tolbert did request records from LPD in 2023, on one occasion even using language identical to what Maya used in her February 27, 2024 request. While LPD declined to provide her copies of the investigative records, it nonetheless offered to make records available for her review, and to waive the standard fees for providing her that access. **Ultimately, Ms. Tolbert declined LPD's offer.** LPD then informed her that if she later decided she did want to view the records, she was welcome to reach out to LPD again. In fact, LPD has recently been in touch with Ms. Tolbert to reiterate its willingness to accommodate her review of the case file related to her son's death, as well as to listen to any concerns and answer any questions she has.

In conclusion, the City stands behind LPD's previous denial of Maya's request for the investigative records related to Carter Tolbert's death. Please feel free to contact me if you have any additional questions or concerns on this matter.

Respectfully,

Laura M. Graham

For the City Attorney's Office

c: LPD Records Manager