

1 AN ACT relating to open records.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 61.870 is amended to read as follows:

4 As used in KRS 61.870 to 61.884, unless the context requires otherwise:

- 5 (1) "Public agency" means:
- 6 (a) Every state or local government officer;
 - 7 (b) Every state or local government department, division, bureau, board,
8 commission, and authority;
 - 9 (c) Every state or local legislative board, commission, committee, and officer;
 - 10 (d) Every county and city governing body, council, school district board, special
11 district board, and municipal corporation;
 - 12 (e) Every state or local court or judicial agency;
 - 13 (f) Every state or local government agency, including the policy-making board of
14 an institution of education, created by or pursuant to state or local statute,
15 executive order, ordinance, resolution, or other legislative act;
 - 16 (g) Any body created by state or local authority in any branch of government;
 - 17 (h) Any body which, within any fiscal year, derives at least twenty-five percent
18 (25%) of its funds expended by it in the Commonwealth of Kentucky from
19 state or local authority funds. However, any funds derived from a state or local
20 authority in compensation for goods or services that are provided by a contract
21 obtained through a public competitive procurement process shall not be
22 included in the determination of whether a body is a public agency under this
23 subsection;
 - 24 (i) Any entity where the majority of its governing body is appointed by a public
25 agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of
26 this subsection; by a member or employee of such a public agency; or by any
27 combination thereof;

- 1 (j) Any board, commission, committee, subcommittee, ad hoc committee,
2 advisory committee, council, or agency, except for a committee of a hospital
3 medical staff, established, created, and controlled by a public agency as
4 defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this
5 subsection;~~and~~
- 6 (k) Any interagency body of two (2) or more public agencies where each public
7 agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of
8 this subsection; and
- 9 (l) Any utility regulated by the Public Service Commission; however, a utility
10 shall be deemed a public agency under this section only for purposes
11 relating to public records;
- 12 (2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs,
13 diskettes, recordings, software, or other documentation regardless of physical form
14 or characteristics, which are prepared, owned, used, in the possession of or retained
15 by a public agency. "Public record" shall not include any records owned or
16 maintained by or for a body referred to in subsection (1)(h) of this section that are
17 not related to functions, activities, programs, or operations funded by state or local
18 authority;
- 19 (3) (a) "Software" means the program code which makes a computer system
20 function, but does not include that portion of the program code which contains
21 public records exempted from inspection as provided by KRS 61.878 or
22 specific addresses of files, passwords, access codes, user identifications, or
23 any other mechanism for controlling the security or restricting access to public
24 records in the public agency's computer system.
- 25 (b) "Software" consists of the operating system, application programs,
26 procedures, routines, and subroutines such as translators and utility programs,
27 but does not include that material which is prohibited from disclosure or

1 copying by a license agreement between a public agency and an outside entity
2 which supplied the material to the agency;

3 (4) (a) "Commercial purpose" means the direct or indirect use of any part of a public
4 record or records, in any form, for sale, resale, solicitation, rent, or lease of a
5 service, or any use by which the user expects a profit either through
6 commission, salary, or fee.

7 (b) "Commercial purpose" shall not include:

8 1. Publication or related use of a public record by a newspaper or
9 periodical;

10 2. Use of a public record by a radio or television station in its news or other
11 informational programs; or

12 3. Use of a public record in the preparation for prosecution or defense of
13 litigation, or claims settlement by the parties to such action, or the
14 attorneys representing the parties;

15 (5) "Official custodian" means the chief administrative officer or any other officer or
16 employee of a public agency who is responsible for the maintenance, care and
17 keeping of public records, regardless of whether such records are in his actual
18 personal custody and control;

19 (6) "Custodian" means the official custodian or any authorized person having personal
20 custody and control of public records;

21 (7) "Media" means the physical material in or on which records may be stored or
22 represented, and which may include, but is not limited to paper, microform, disks,
23 diskettes, optical disks, magnetic tapes, and cards;

24 (8) "Mechanical processing" means any operation or other procedure which is
25 transacted on a machine, and which may include, but is not limited to a copier,
26 computer, recorder or tape processor, or other automated device; and

27 (9) "Booking photograph and photographic record of inmate" means a photograph or

1 image of an individual generated by law enforcement for identification purposes
2 when the individual is booked into a detention facility as defined in KRS 520.010 or
3 photograph and image of an inmate taken pursuant to KRS 196.099.

4 ➔Section 2. KRS 61.878 is amended to read as follows:

5 (1) The following public records are excluded from the application of KRS 61.870 to
6 61.884 and shall be subject to inspection only upon order of a court of competent
7 jurisdiction, except that no court shall authorize the inspection by any party of any
8 materials pertaining to civil litigation beyond that which is provided by the Rules of
9 Civil Procedure governing pretrial discovery:

10 (a) Public records containing information of a personal nature where the public
11 disclosure thereof would constitute a clearly unwarranted invasion of personal
12 privacy;

13 (b) Records confidentially disclosed to an agency and compiled and maintained
14 for scientific research. This exemption shall not, however, apply to records the
15 disclosure or publication of which is directed by another statute;

16 (c) 1. Upon and after July 15, 1992, records confidentially disclosed to an
17 agency or required by an agency to be disclosed to it, generally
18 recognized as confidential or proprietary, which if openly disclosed
19 would permit an unfair commercial advantage to competitors of the
20 entity that disclosed the records;

21 2. Upon and after July 15, 1992, records confidentially disclosed to an
22 agency or required by an agency to be disclosed to it, generally
23 recognized as confidential or proprietary, which are compiled and
24 maintained:

25 a. In conjunction with an application for or the administration of a
26 loan or grant;

27 b. In conjunction with an application for or the administration of

- 1 assessments, incentives, inducements, and tax credits as described
2 in KRS Chapter 154;
- 3 c. In conjunction with the regulation of commercial enterprise,
4 including mineral exploration records, unpatented, secret
5 commercially valuable plans, appliances, formulae, or processes,
6 which are used for the making, preparing, compounding, treating,
7 or processing of articles or materials which are trade commodities
8 obtained from a person; or
- 9 d. For the grant or review of a license to do business.
- 10 3. The exemptions provided for in subparagraphs 1. and 2. of this
11 paragraph shall not apply to records the disclosure or publication of
12 which is directed by another statute;
- 13 (d) Public records pertaining to a prospective location of a business or industry
14 where no previous public disclosure has been made of the business' or
15 industry's interest in locating in, relocating within or expanding within the
16 Commonwealth. This exemption shall not include those records pertaining to
17 application to agencies for permits or licenses necessary to do business or to
18 expand business operations within the state, except as provided in paragraph
19 (c) of this subsection;
- 20 (e) Public records which are developed by an agency in conjunction with the
21 regulation or supervision of financial institutions, including but not limited to,
22 banks, savings and loan associations, and credit unions, which disclose the
23 agency's internal examining or audit criteria and related analytical methods;
- 24 (f) The contents of real estate appraisals, engineering or feasibility estimates and
25 evaluations made by or for a public agency relative to acquisition of property,
26 until such time as all of the property has been acquired. The law of eminent
27 domain shall not be affected by this provision;

- 1 (g) Test questions, scoring keys, and other examination data used to administer a
2 licensing examination, examination for employment, or academic examination
3 before the exam is given or if it is to be given again;
- 4 (h) Records of law enforcement agencies or agencies involved in administrative
5 adjudication that were compiled in the process of detecting and investigating
6 statutory or regulatory violations if the disclosure of the information would
7 harm the agency by revealing the identity of informants not otherwise known
8 or by premature release of information to be used in a prospective law
9 enforcement action or administrative adjudication. Unless exempted by other
10 provisions of KRS 61.870 to 61.884, public records exempted under this
11 provision shall be open after enforcement action is completed or a decision is
12 made to take no action; however, records or information compiled and
13 maintained by county attorneys or Commonwealth's attorneys pertaining to
14 criminal investigations or criminal litigation shall be exempted from the
15 provisions of KRS 61.870 to 61.884 and shall remain exempted after
16 enforcement action, including litigation, is completed or a decision is made to
17 take no action. The exemptions provided by this subsection shall not be used
18 by the custodian of the records to delay or impede the exercise of rights
19 granted by KRS 61.870 to 61.884;
- 20 (i) Preliminary drafts, notes, correspondence with private individuals, other than
21 correspondence which is intended to give notice of final action of a public
22 agency;
- 23 (j) Preliminary recommendations, and preliminary memoranda in which opinions
24 are expressed or policies formulated or recommended;
- 25 (k) All public records or information the disclosure of which is prohibited by
26 federal law or regulation;
- 27 (l) Public records or information the disclosure of which is prohibited or

1 restricted or otherwise made confidential by enactment of the General
2 Assembly, including any information acquired by the Department of Revenue
3 in tax administration that is prohibited from divulgence or disclosure under
4 KRS 131.190;

5 (m) 1. Public records the disclosure of which would have a reasonable
6 likelihood of threatening the public safety by exposing a vulnerability in
7 preventing, protecting against, mitigating, or responding to a terrorist act
8 and limited to:

9 a. Criticality lists resulting from consequence assessments;

10 b. Vulnerability assessments;

11 c. Antiterrorism protective measures and plans;

12 d. Counterterrorism measures and plans;

13 e. Security and response needs assessments;

14 f. Infrastructure records that expose a vulnerability referred to in this
15 subparagraph through the disclosure of the location, configuration,
16 or security of critical systems, including public utility critical
17 systems. These critical systems shall include but not be limited to
18 information technology, communication, electrical, fire
19 suppression, ventilation, water, wastewater, sewage, and gas
20 systems;

21 g. The following records when their disclosure will expose a
22 vulnerability referred to in this subparagraph: detailed drawings,
23 schematics, maps, or specifications of structural elements, floor
24 plans, and operating, utility, or security systems of any building or
25 facility owned, occupied, leased, or maintained by a public agency;
26 and

27 h. Records when their disclosure will expose a vulnerability referred

- 1 to in this subparagraph and that describe the exact physical
2 location of hazardous chemical, radiological, or biological
3 materials.
- 4 2. As used in this paragraph, "terrorist act" means a criminal act intended
5 to:
- 6 a. Intimidate or coerce a public agency or all or part of the civilian
7 population;
- 8 b. Disrupt a system identified in subparagraph 1.f. of this paragraph;
9 or
- 10 c. Cause massive destruction to a building or facility owned,
11 occupied, leased, or maintained by a public agency.
- 12 3. On the same day that a public agency denies a request to inspect a public
13 record for a reason identified in this paragraph, that public agency shall
14 forward a copy of the written denial of the request, referred to in KRS
15 61.880(1), to the executive director of the Kentucky Office of Homeland
16 Security and the Attorney General.
- 17 4. Nothing in this paragraph shall affect the obligations of a public agency
18 with respect to disclosure and availability of public records under state
19 environmental, health, and safety programs.
- 20 5. The exemption established in this paragraph shall not apply when a
21 member of the Kentucky General Assembly seeks to inspect a public
22 record identified in this paragraph under the Open Records Law;
- 23 (n) Public or private records, including books, papers, maps, photographs, cards,
24 tapes, discs, diskettes, recordings, software, or other documentation regardless
25 of physical form or characteristics, having historic, literary, artistic, or
26 commemorative value accepted by the archivist of a public university,
27 museum, or government depository from a donor or depositor other than a

1 public agency. This exemption shall apply to the extent that nondisclosure is
2 requested in writing by the donor or depositor of such records, but shall not
3 apply to records the disclosure or publication of which is mandated by another
4 statute or by federal law;

5 (o) Records of a procurement process under KRS Chapter 45A or 56. This
6 exemption shall not apply after:

- 7 1. A contract is awarded; or
- 8 2. The procurement process is canceled without award of a contract and
9 there is a determination that the contract will not be resolicited; and

10 (p) Communications of a purely personal nature unrelated to any governmental
11 function.

12 (2) No exemption in this section shall be construed to prohibit disclosure of statistical
13 information not descriptive of any readily identifiable person.

14 (3) No exemption in this section shall be construed to deny, abridge, or impede the
15 right of a public agency employee, including university employees, an applicant for
16 employment, or an eligible on a register to inspect and to copy any record including
17 preliminary and other supporting documentation that relates to him. The records
18 shall include, but not be limited to, work plans, job performance, demotions,
19 evaluations, promotions, compensation, classification, reallocation, transfers, lay-
20 offs, disciplinary actions, examination scores, and preliminary and other supporting
21 documentation. A public agency employee, including university employees,
22 applicant, or eligible shall not have the right to inspect or to copy any examination
23 or any documents relating to ongoing criminal or administrative investigations by
24 an agency.

25 (4) If any public record contains material which is not excepted under this section, the
26 public agency shall separate the excepted and make the nonexcepted material
27 available for examination.

1 (5) The provisions of this section shall in no way prohibit or limit the exchange of
2 public records or the sharing of information between public agencies when the
3 exchange is serving a legitimate governmental need or is necessary in the
4 performance of a legitimate government function.

5 **(6) No exemption in this section shall be construed to deny access to records of a**
6 **utility relating to any expenditure of funds that have been or will be paid for by its**
7 **customers.**