

1 AN ACT relating to personal information.

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;
- 9 (2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs,
10 diskettes, recordings, software, or other documentation regardless of physical form
11 or characteristics, which are prepared, owned, used, in the possession of or retained
12 by a public agency. "Public record" shall not include any records owned or
13 maintained by or for a body referred to in subsection (1)(h) of this section that are
14 not related to functions, activities, programs, or operations funded by state or local
15 authority;
- 16 (3) (a) "Software" means the program code which makes a computer system
17 function, but does not include that portion of the program code which contains
18 public records exempted from inspection as provided by KRS 61.878 or
19 specific addresses of files, passwords, access codes, user identifications, or
20 any other mechanism for controlling the security or restricting access to public
21 records in the public agency's computer system.
- 22 (b) "Software" consists of the operating system, application programs,
23 procedures, routines, and subroutines such as translators and utility programs,
24 but does not include that material which is prohibited from disclosure or
25 copying by a license agreement between a public agency and an outside entity
26 which supplied the material to the agency;
- 27 (4) (a) "Commercial purpose" means the direct or indirect use of any part of a public

1 record or records, in any form, for sale, resale, solicitation, rent, or lease of a
2 service, or any use by which the user expects a profit either through
3 commission, salary, or fee.

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

- 5 1. Publication or related use of a public record by a newspaper or
6 periodical;
- 7 2. Use of a public record by a radio or television station in its news or other
8 informational programs; or
- 9 3. Use of a public record in the preparation for prosecution or defense of
10 litigation, or claims settlement by the parties to such action, or the
11 attorneys representing the parties;

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

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

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

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

24 (9) "Booking photograph and photographic record of inmate" means a photograph or
25 image of an individual generated by law enforcement for identification purposes
26 when the individual is booked into a detention facility as defined in KRS 520.010 or
27 photograph and image of an inmate taken pursuant to KRS 196.099; **and**~~;~~

1 **(10) "Public officer" means:**

2 **(a) Sworn public peace officers;**

3 **(b) Public safety officers;**

4 **(c) Any individual who is an employee or retired employee of a public agency**
 5 **and who is certified as a first responder under KRS 61.900, 61.902 to**
 6 **61.930, or KRS Chapter 311A, or whose employment duties include law**
 7 **enforcement, emergency medical services, or firefighting activities;**

8 **(d) Active and retired judges or justices of the Supreme Court, Court of**
 9 **Appeals, Circuit Court, District Court, Family Court, or Kentucky Labor**
 10 **Cabinet;**

11 **(e) Employees of the Cabinet for Health and Family Services whose duties**
 12 **include the investigation of abuse, neglect, exploitation, fraud, theft, or**
 13 **other criminal activities;**

14 **(f) Employees of law enforcement agencies who testify in criminal cases,**
 15 **including investigative analysts and lab technicians;**

16 **(g) Active and retired United States, Commonwealth's, and county attorneys,**
 17 **their assistants, statewide prosecutors, and guardians ad litem;**

18 **(h) Active and retired corrections officers, jailers, corrections probation and**
 19 **parole officers, juvenile probation officers, and juvenile detention officers;**
 20 **and**

21 **(i) Persons employed at emergency call centers in the state of Kentucky.**

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

- 23 (1) The following public records are excluded from the application of KRS 61.870 to
 24 61.884 and shall be subject to inspection only upon order of a court of competent
 25 jurisdiction, except that no court shall authorize the inspection by any party of any
 26 materials pertaining to civil litigation beyond that which is provided by the Rules of
 27 Civil Procedure governing pretrial discovery:

- 1 (a) Public records containing information of a personal nature where the public
2 disclosure thereof would constitute a clearly unwarranted invasion of personal
3 privacy;
- 4 (b) Records confidentially disclosed to an agency and compiled and maintained
5 for scientific research. This exemption shall not, however, apply to records the
6 disclosure or publication of which is directed by another statute;
- 7 (c) 1. Upon and after July 15, 1992, records confidentially disclosed to an
8 agency or required by an agency to be disclosed to it, generally
9 recognized as confidential or proprietary, which if openly disclosed
10 would permit an unfair commercial advantage to competitors of the
11 entity that disclosed the records;
- 12 2. Upon and after July 15, 1992, records confidentially disclosed to an
13 agency or required by an agency to be disclosed to it, generally
14 recognized as confidential or proprietary, which are compiled and
15 maintained:
- 16 a. In conjunction with an application for or the administration of a
17 loan or grant;
- 18 b. In conjunction with an application for or the administration of
19 assessments, incentives, inducements, and tax credits as described
20 in KRS Chapter 154;
- 21 c. In conjunction with the regulation of commercial enterprise,
22 including mineral exploration records, unpatented, secret
23 commercially valuable plans, appliances, formulae, or processes,
24 which are used for the making, preparing, compounding, treating,
25 or processing of articles or materials which are trade commodities
26 obtained from a person; or
- 27 d. For the grant or review of a license to do business.

- 1 3. The exemptions provided for in subparagraphs 1. and 2. of this
2 paragraph shall not apply to records the disclosure or publication of
3 which is directed by another statute;
- 4 (d) Public records pertaining to a prospective location of a business or industry
5 where no previous public disclosure has been made of the business' or
6 industry's interest in locating in, relocating within or expanding within the
7 Commonwealth. This exemption shall not include those records pertaining to
8 application to agencies for permits or licenses necessary to do business or to
9 expand business operations within the state, except as provided in paragraph
10 (c) of this subsection;
- 11 (e) Public records which are developed by an agency in conjunction with the
12 regulation or supervision of financial institutions, including but not limited to,
13 banks, savings and loan associations, and credit unions, which disclose the
14 agency's internal examining or audit criteria and related analytical methods;
- 15 (f) The contents of real estate appraisals, engineering or feasibility estimates and
16 evaluations made by or for a public agency relative to acquisition of property,
17 until such time as all of the property has been acquired. The law of eminent
18 domain shall not be affected by this provision;
- 19 (g) Test questions, scoring keys, and other examination data used to administer a
20 licensing examination, examination for employment, or academic examination
21 before the exam is given or if it is to be given again;
- 22 (h) Records of law enforcement agencies or agencies involved in administrative
23 adjudication that were compiled in the process of detecting and investigating
24 statutory or regulatory violations if the disclosure of the information would
25 harm the agency by revealing the identity of informants not otherwise known
26 or by premature release of information to be used in a prospective law
27 enforcement action or administrative adjudication. Unless exempted by other

1 provisions of KRS 61.870 to 61.884, public records exempted under this
2 provision shall be open after enforcement action is completed or a decision is
3 made to take no action; however, records or information compiled and
4 maintained by county attorneys or Commonwealth's attorneys pertaining to
5 criminal investigations or criminal litigation shall be exempted from the
6 provisions of KRS 61.870 to 61.884 and shall remain exempted after
7 enforcement action, including litigation, is completed or a decision is made to
8 take no action. The exemptions provided by this subsection shall not be used
9 by the custodian of the records to delay or impede the exercise of rights
10 granted by KRS 61.870 to 61.884;

11 (i) Preliminary drafts, notes, correspondence with private individuals, other than
12 correspondence which is intended to give notice of final action of a public
13 agency;

14 (j) Preliminary recommendations, and preliminary memoranda in which opinions
15 are expressed or policies formulated or recommended;

16 (k) All public records or information the disclosure of which is prohibited by
17 federal law or regulation;

18 (l) Public records or information the disclosure of which is prohibited or
19 restricted or otherwise made confidential by enactment of the General
20 Assembly, including any information acquired by the Department of Revenue
21 in tax administration that is prohibited from divulgence or disclosure under
22 KRS 131.190;

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

27 a. Criticality lists resulting from consequence assessments;

- 1 b. Vulnerability assessments;
- 2 c. Antiterrorism protective measures and plans;
- 3 d. Counterterrorism measures and plans;
- 4 e. Security and response needs assessments;
- 5 f. Infrastructure records that expose a vulnerability referred to in this
- 6 subparagraph through the disclosure of the location, configuration,
- 7 or security of critical systems, including public utility critical
- 8 systems. These critical systems shall include but not be limited to
- 9 information technology, communication, electrical, fire
- 10 suppression, ventilation, water, wastewater, sewage, and gas
- 11 systems;
- 12 g. The following records when their disclosure will expose a
- 13 vulnerability referred to in this subparagraph: detailed drawings,
- 14 schematics, maps, or specifications of structural elements, floor
- 15 plans, and operating, utility, or security systems of any building or
- 16 facility owned, occupied, leased, or maintained by a public agency;
- 17 and
- 18 h. Records when their disclosure will expose a vulnerability referred
- 19 to in this subparagraph and that describe the exact physical
- 20 location of hazardous chemical, radiological, or biological
- 21 materials.
- 22 2. As used in this paragraph, "terrorist act" means a criminal act intended
- 23 to:
- 24 a. Intimidate or coerce a public agency or all or part of the civilian
- 25 population;
- 26 b. Disrupt a system identified in subparagraph 1.f. of this paragraph;
- 27 or

- 1 c. Cause massive destruction to a building or facility owned,
2 occupied, leased, or maintained by a public agency.
- 3 3. On the same day that a public agency denies a request to inspect a public
4 record for a reason identified in this paragraph, that public agency shall
5 forward a copy of the written denial of the request, referred to in KRS
6 61.880(1), to the executive director of the Kentucky Office of Homeland
7 Security and the Attorney General.
- 8 4. Nothing in this paragraph shall affect the obligations of a public agency
9 with respect to disclosure and availability of public records under state
10 environmental, health, and safety programs.
- 11 5. The exemption established in this paragraph shall not apply when a
12 member of the Kentucky General Assembly seeks to inspect a public
13 record identified in this paragraph under the Open Records Law;
- 14 (n) Public or private records, including books, papers, maps, photographs, cards,
15 tapes, discs, diskettes, recordings, software, or other documentation regardless
16 of physical form or characteristics, having historic, literary, artistic, or
17 commemorative value accepted by the archivist of a public university,
18 museum, or government depository from a donor or depositor other than a
19 public agency. This exemption shall apply to the extent that nondisclosure is
20 requested in writing by the donor or depositor of such records, but shall not
21 apply to records the disclosure or publication of which is mandated by another
22 statute or by federal law;
- 23 (o) Records of a procurement process under KRS Chapter 45A or 56. This
24 exemption shall not apply after:
- 25 1. A contract is awarded; or
26 2. The procurement process is canceled without award of a contract and
27 there is a determination that the contract will not be resolicited;~~and~~

1 (p) Communications of a purely personal nature unrelated to any governmental
2 function; and

3 (q) Personally identifiable information in records that would reveal the address
4 or location of a public officer if that officer has notified the public agency
5 responsible for those records that he or she does not want the information
6 to be made public. Notification by the public officer shall be valid for three
7 (3) years, may be renewed, and shall include:

8 1. A written request that the information be excluded from disclosure;
9 and

10 2. A letter from the employer of the public officer verifying present or
11 past employment in a public officer position.

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 ➔SECTION 3. A NEW SECTION OF KRS 61.870 TO 61.884 IS CREATED TO
6 READ AS FOLLOWS:

7 **(1) As used in this section:**

8 **(a) "Immediate family member" means:**

- 9 **1. A spouse, child, parent, or person under the familial custody or care**
10 **of a judicial officer, prosecutor, or law enforcement agent;**
- 11 **2. A person related by blood, law, or marriage to the judicial officer,**
12 **prosecutor, or law enforcement agent; or**
- 13 **3. A person who lives in the same residence as the judicial officer,**
14 **prosecutor, or law enforcement agent;**

15 **(b) "Judicial officer" means any current, former, or retired:**

- 16 **1. Administrative law judge or member of the Workers' Compensation**
17 **Board pursuant to KRS Chapter 342;**
- 18 **2. Federal justice, judge, or magistrate judge as defined in the**
19 **Constitution of the United States or the United States Code;**
- 20 **3. Hearing officer, qualified to conduct administrative hearings pursuant**
21 **to KRS Chapter 13B;**
- 22 **4. Justice, judge, trial commissioner, or domestic relations commissioner**
23 **of the Kentucky Court of Justice; or**
- 24 **5. Circuit Court clerk;**

25 **(c) "Law enforcement agent" means any "peace officer" as defined in KRS**
26 **446.010 and any "law enforcement officer" as defined in KRS 15.310 and**
27 **209A.020;**

1 (d) "Personally identifiable information" means the following:

2 1. Biometric, health, or medical data, or insurance information;

3 2. Birth and marriage records;

4 3. Date of birth;

5 4. Financial account number or credit or debit card number;

6 5. Home or physical address, including:

7 a. Any secondary or vacation address;

8 b. Any property tax or property ownership records; or

9 c. Any directions to or identifying photographs of any primary,
10 secondary, or vacation residence;

11 6. Home, personal mobile, or direct personal telephone number to the
12 individual, except that nothing in this section shall be construed to
13 include any record made in the course of performing an official duty
14 regardless of the nature of the device used;

15 7. Identification of any children of the individual under the age of
16 eighteen (18);

17 8. Personal electronic mail addresses, except that nothing in this section
18 shall be construed to include any record made in the course of
19 performing an official duty regardless of the nature of the device used;

20 9. Photographs of any vehicle personally owned, leased, or operated by
21 the individual, including photographs of any license plates, vehicle
22 registration, or vehicle identification numbers;

23 10. School, day care, or employment locations or assignments;

24 11. Social Security number; or

25 12. Vehicle registration;

26 (e) "Prosecutor" means any current, former, or retired:

27 1. Attorney General or deputy or assistant attorney general;

- 1 2. Commonwealth's attorney or assistant Commonwealth's attorney;
2 3. County attorney or assistant county attorney;
3 4. Special prosecutor appointed by law or executive or judicial order; or
4 5. United States attorney or assistant United States attorney;

5 (f) "Public agency" has the same meaning as in Section 1 of this Act; and

6 (g) "Public defender" means a defending attorney, as defined in KRS 31.100.

7 (2) In addition to any protections provided under Section 2 of this Act:

8 (a) Upon written request of a judicial officer, law enforcement agent,
9 prosecutor, public defender, or immediate family member, or their
10 authorized agent, a public agency shall designate any of the requestor's
11 personally identifiable information as confidential and shall not post, re-
12 post, publish, or otherwise make known the personally identifiable
13 information. Any person, or authorized agent, who has requested their
14 information be made confidential may withdraw the request or permit
15 release of their personally identifiable information at any time;

16 (b) When a public agency receives a written request pursuant to paragraph (a)
17 of this subsection, the agency shall redact and remove the personally
18 identifiable information within three (3) business days of receipt of the
19 request from any public posting or publication existing at the time the
20 request is received to the extent practicable; and

21 (c) If a public agency cannot redact and remove the personally identifiable
22 information within three (3) business days, then it shall notify the requestor,
23 in writing, within twenty-four (24) hours of the failure to redact or remove
24 the information, specifically identify the information that was not redacted
25 or removed, and state the reasons that redaction or removal was not
26 practicable.

27 (3) The exemptions in this section are supplemental to the exemptions provided in

1 Section 2 of this Act and shall not be deemed to replace any exemptions or
2 personal privacy protections provided in Section 2 of this Act.

3 (4) Nothing in this section shall prevent a public agency from using personally
4 identifiable information as required to perform the routine functions of the
5 agency.