

1 AN ACT relating to personal information and declaring an emergency.

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;

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) "Resident of the Commonwealth" means:
- 2 (a) An individual residing in the Commonwealth;
- 3 (b) A domestic business entity with a location in the Commonwealth;
- 4 (c) A foreign business entity registered with the Secretary of State;
- 5 (d) An individual that is employed and works at a location or locations within the
- 6 Commonwealth;
- 7 (e) An individual or business entity that owns real property within the
- 8 Commonwealth;
- 9 (f) Any individual or business entity that has been authorized to act on behalf of
- 10 an individual or business entity defined in paragraphs (a) to (e) of this
- 11 subsection; or
- 12 (g) A news-gathering organization as defined in KRS 189.635(8)(b)1.a. to e.;

13 **(11) "Judicial officer" means any current, former, or retired:**

- 14 **(a) Administrative law judge or member of the Workers' Compensation Board**
- 15 **pursuant to KRS Chapter 342;**
- 16 **(b) Federal justice, judge, or magistrate judge as defined in the Constitution of**
- 17 **the United States or the United States Code;**
- 18 **(c) Hearing officer, qualified to conduct administrative hearings pursuant to**
- 19 **KRS Chapter 13B;**
- 20 **(d) Justice, judge, trial commissioner, or domestic relations commissioner of**
- 21 **the Kentucky Court of Justice; or**
- 22 **(e) Circuit Court clerk;**

23 **(12) "Prosecutor" means any current, former, or retired:**

- 24 **(a) Attorney General or deputy or assistant attorney general;**
- 25 **(b) Commonwealth's attorney or assistant Commonwealth's attorney;**
- 26 **(c) County attorney or assistant county attorney;**
- 27 **(d) Special prosecutor appointed by law or executive or judicial order; or**

- 1 (e) United States attorney or assistant United States attorney;
 2 (13) "Public defender" means a defending attorney, as defined in KRS 31.100; and
 3 (14) "Public officer" means:
 4 (a) Sworn public peace officers;
 5 (b) Public safety officers;
 6 (c) Judicial officers;
 7 (d) Prosecutors;
 8 (e) Public defenders;
 9 (f) Any individual who is an employee or retired employee of a public agency
 10 and who is certified as a first responder under KRS 61.900, 61.902 to
 11 61.930, or Chapter 311A, or whose employment duties include law
 12 enforcement, emergency medical services, or firefighting activities;
 13 (g) Employees of the Cabinet for Health and Family Services whose duties
 14 include the investigation of abuse, neglect, exploitation, fraud, theft, or
 15 other criminal activities;
 16 (h) Employees of law enforcement agencies who testify in criminal cases,
 17 including investigative analysts and lab technicians;
 18 (i) Active and retired United States, Commonwealth's, and county attorneys,
 19 their assistants, statewide prosecutors, and guardians ad litem;
 20 (j) Active and retired corrections officers, jailers, corrections probation and
 21 parole officers, juvenile probation officers, and juvenile detention officers;
 22 and
 23 (k) Persons employed at emergency call centers in the state of Kentucky.

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

- 25 (1) The following public records are excluded from the application of KRS 61.870 to
 26 61.884 and shall be subject to inspection only upon order of a court of competent
 27 jurisdiction, except that no court shall authorize the inspection by any party of any

1 materials pertaining to civil litigation beyond that which is provided by the Rules of
2 Civil Procedure governing pretrial discovery:

3 (a) Public records containing information of a personal nature where the public
4 disclosure thereof would constitute a clearly unwarranted invasion of personal
5 privacy;

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

9 (c) 1. Records confidentially disclosed to an agency or required by an agency
10 to be disclosed to it, generally recognized as confidential or proprietary,
11 which if openly disclosed would permit an unfair commercial advantage
12 to competitors of the entity that disclosed the records;

13 2. Records confidentially disclosed to an agency or required by an agency
14 to be disclosed to it, generally recognized as confidential or proprietary,
15 which are compiled and 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 or state law;

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;

- 1 (p) Client and case files maintained by the Department of Public Advocacy or any
2 person or entity contracting with the Department of Public Advocacy for the
3 provision of legal representation under KRS Chapter 31;
- 4 (q) Except as provided in KRS 61.168, photographs or videos that depict the
5 death, killing, rape, or sexual assault of a person. However, such photographs
6 or videos shall be made available by the public agency to the requesting party
7 for viewing on the premises of the public agency, or a mutually agreed upon
8 location, at the request of;
- 9 1. a. Any victim depicted in the photographs or videos, his or her
10 immediate family, or legal representative;
- 11 b. Any involved insurance company or its representative; or
- 12 c. The legal representative of any involved party;
- 13 2. Any state agency or political subdivision investigating official
14 misconduct; or
- 15 3. A legal representative for a person under investigation for, charged with,
16 pled guilty to, or found guilty of a crime related to the underlying
17 incident. The person under investigation for, charged with, pled guilty
18 to, or found guilty of a crime related to the underlying incident or their
19 immediate family shall not be permitted to have access to the
20 photographs or videos;~~and~~
- 21 (r) Communications of a purely personal nature unrelated to any governmental
22 function; and
- 23 (s) Personally identifiable information in records that would reveal the address
24 or location of a public officer if that officer has notified the public agency
25 responsible for those records that he or she does not want the information
26 to be made public. Notification by the public officer shall be valid for three
27 (3) years, may be renewed, and shall include:

- 1 1. A written request that the information be excluded from disclosure;
- 2 and
- 3 2. A letter from the employer of the public officer verifying present or
- 4 past employment in a public officer position.

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

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

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

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

25 (6) When material is made available pursuant to a request under subsection (1)(q) of
 26 this section, the public agency shall not be required to make a copy of the recording
 27 except as provided in KRS 61.169, and the requesting parties shall not be limited in

1 the number of times they may view the material.

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

4 (1) As used in this section:

5 (a) "Immediate family member" means:

6 1. A spouse, child, parent, or person under the familial custody or care
7 of a public officer;

8 2. A person related by blood, law, or marriage to a public officer; or

9 3. A person who lives in the same residence as a public officer; and

10 (b) "Personally identifiable information" means the following:

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

12 2. Birth and marriage records;

13 3. Date of birth;

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

15 5. Home or physical address, including:

16 a. Any secondary or vacation address;

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

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

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

24 7. Identification of any children of the individual under the age of
25 eighteen (18);

26 8. Personal electronic mail addresses, except that nothing in this section
27 shall be construed to include any record made in the course of

1 performing an official duty regardless of the nature of the device used;

2 9. Photographs of any vehicle personally owned, leased, or operated by
3 the individual, including photographs of any license plates, vehicle
4 registration, or vehicle identification numbers;

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

6 11. Social Security number; or

7 12. Vehicle registration.

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

9 (a) Upon written request of a public officer, 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 that 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 and any other
 3 exemption or personal privacy protections provided by law.

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

7 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
 8 READ AS FOLLOWS:

9 (1) For the purposes of this section:

10 (a) "Dissemination" or "disseminating" means the public publishing, posting,
 11 or otherwise disclosing or selling of information, whether electronically, by
 12 print, or through any other medium, for other persons or entities to access
 13 or view, with no purpose of legitimate communication;

14 (b) "Immediate family member" has the same meaning as in Section 3 of this
 15 Act;

16 (c) "Personally identifiable information" has the same meaning as in Section 3
 17 of this Act; and

18 (d) "Public officer" has the same meaning as in Section 1 of this Act.

19 (2) In addition to pursuing any other remedy provided by law, a public officer or his
 20 or her immediate family member may file a civil action against a person if:

21 (a) The person disseminates the personally identifiable information of the
 22 person who files an action under this section:

23 1. In response to a decision or action, or to influence or impact any
 24 future action, taken by the at-risk individual as part of his or her
 25 official duties; and

26 2. With the intent to intimidate, harass, annoy, or alarm; and

27 (b) The dissemination places the public officer or his or her immediate family

1 member in reasonable fear of physical injury, or reasonable fear of harm to
2 their property.

3 (3) A public officer, or his or her immediate family member, may recover damages,
4 including punitive damages, court costs, and reasonable attorney's fees, from a
5 person who has disseminated their personally identifiable information.

6 (4) The action may be filed in Circuit Court in the county where the alleged violation
7 occurred, or where the public officer or his or her immediate family member
8 resides.

9 (5) Nothing in this section shall be construed to impose liability on a broadband
10 Internet access service provider, a telecommunications service provider, an
11 interconnected VoIP provider, or a mobile service provider as defined in 47
12 U.S.C. sec. 153, a commercial mobile service provider as defined in 47 U.S.C. sec.
13 332(d), or a cable operator as defined in 47 U.S.C. sec. 522, when acting in its
14 capacity as a provider of those services.

15 ➔Section 5. This Act may be cited as the Fred Capps Act.

16 ➔Section 6. Whereas, personal information is easily published over the Internet
17 and social media, and there has been an increase in death threats and deaths of judges and
18 other public officials, an emergency is declared to exist, and this Act takes effect upon its
19 passage and approval by the Governor or upon its otherwise becoming a law.