

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~~

(10) "Resident of the Commonwealth" means:

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

(11) "Immediate family member" means:

- (a) A spouse, child, parent, or person under the familial custody or care of a public officer; or**
- (b) A person who lives in the same residence as a public officer;**

(12) "Judicial officer" means any current, former, or retired:

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

(13) "Personally identifiable information" means the following:

- 1 (a) Biometric, health, or medical data, or insurance information;
- 2 (b) Birth and marriage records;
- 3 (c) Date of birth;
- 4 (d) Financial account number or credit or debit card number;
- 5 (e) Home or physical address, including:
 - 6 1. Any secondary or vacation address;
 - 7 2. Any property tax or property ownership records; or
 - 8 3. Any directions to or identifying photographs of any primary,
 - 9 secondary, or vacation residence;
- 10 (f) Home, personal mobile, or direct personal telephone number to the
- 11 individual, except that nothing in this section shall be construed to include
- 12 any record made in the course of performing an official duty regardless of
- 13 the nature of the device used;
- 14 (g) Identification of any children of the individual under the age of eighteen
- 15 (18);
- 16 (h) Personal electronic mail addresses, except that nothing in this section shall
- 17 be construed to include any record made in the course of performing an
- 18 official duty regardless of the nature of the device used;
- 19 (i) Photographs of any vehicle personally owned, leased, or operated by the
- 20 individual, including photographs of any license plates, vehicle registration,
- 21 or vehicle identification numbers;
- 22 (j) School, day care, or employment locations or assignments;
- 23 (k) Social Security number; or
- 24 (l) Vehicle registration;
- 25 (14) "Prosecutor" means any current, former, or retired:
 - 26 (a) Attorney General or deputy or assistant attorney general;
 - 27 (b) Commonwealth's attorney or assistant Commonwealth's attorney;

1 (c) County attorney or assistant county attorney;

2 (d) Special prosecutor appointed by law or executive or judicial order; or

3 (e) United States attorney or assistant United States attorney;

4 (15) "Public defender" has the same meaning as defending attorney as defined in
 5 KRS 31.100; and

6 (16) "Public officer" means:

7 (a) Sworn public peace officers;

8 (b) Public safety officers;

9 (c) Judicial officers;

10 (d) Prosecutors;

11 (e) Public defenders;

12 (f) Any individual who is an employee or retired employee of a public agency
 13 and who is certified as a first responder under KRS 61.900, 61.902 to
 14 61.930, or Chapter 311A, or whose employment duties include law
 15 enforcement, emergency medical services, or firefighting activities;

16 (g) Employees of the Cabinet for Health and Family Services whose duties
 17 include the investigation of abuse, neglect, exploitation, fraud, theft, or
 18 other criminal activities;

19 (h) Employees of law enforcement agencies who testify in criminal cases,
 20 including investigative analysts and lab technicians;

21 (i) Active and retired corrections officers, jailers, corrections probation and
 22 parole officers, juvenile probation officers, and juvenile detention officers;
 23 and

24 (j) Persons employed at emergency call centers in the state of Kentucky.

25 ➡ Section 2. KRS 61.878 is amended to read as follows:

26 (1) The following public records are excluded from the application of KRS 61.870 to
 27 61.884 and shall be subject to inspection only upon order of a court of competent

jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:

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

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

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

2. Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:

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

b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;

c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or

1 d. For the grant or review of a license to do business.

2 3. The exemptions provided for in subparagraphs 1. and 2. of this
3 paragraph shall not apply to records the disclosure or publication of
4 which is directed by another statute;

5 (d) Public records pertaining to a prospective location of a business or industry
6 where no previous public disclosure has been made of the business' or
7 industry's interest in locating in, relocating within or expanding within the
8 Commonwealth. This exemption shall not include those records pertaining to
9 application to agencies for permits or licenses necessary to do business or to
10 expand business operations within the state, except as provided in paragraph
11 (c) of this subsection;

12 (e) Public records which are developed by an agency in conjunction with the
13 regulation or supervision of financial institutions, including but not limited to
14 banks, savings and loan associations, and credit unions, which disclose the
15 agency's internal examining or audit criteria and related analytical methods;

16 (f) The contents of real estate appraisals, engineering or feasibility estimates and
17 evaluations made by or for a public agency relative to acquisition of property,
18 until such time as all of the property has been acquired. The law of eminent
19 domain shall not be affected by this provision;

20 (g) Test questions, scoring keys, and other examination data used to administer a
21 licensing examination, examination for employment, or academic examination
22 before the exam is given or if it is to be given again;

23 (h) Records of law enforcement agencies or agencies involved in administrative
24 adjudication that were compiled in the process of detecting and investigating
25 statutory or regulatory violations if the disclosure of the information would
26 harm the agency by revealing the identity of informants not otherwise known
27 or by premature release of information to be used in a prospective law

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

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

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

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

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

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

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

or

c. Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.

3. On the same day that a public agency denies a request to inspect a public record for a reason identified in this paragraph, that public agency shall forward a copy of the written denial of the request, referred to in KRS 61.880(1), to the executive director of the Kentucky Office of Homeland Security and the Attorney General.

4. Nothing in this paragraph shall affect the obligations of a public agency with respect to disclosure and availability of public records under state environmental, health, and safety programs.

5. The exemption established in this paragraph shall not apply when a member of the Kentucky General Assembly seeks to inspect a public record identified in this paragraph under the Open Records Law;

(n) Public or private records, including books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, having historic, literary, artistic, or commemorative value accepted by the archivist of a public university, museum, or government depository from a donor or depositor other than a public agency. This exemption shall apply to the extent that nondisclosure is requested in writing by the donor or depositor of such records, but shall not apply to records the disclosure or publication of which is mandated by another statute or by federal law;

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

1. A contract is awarded; or

2. The procurement process is canceled without award of a contract and

1 there is a determination that the contract will not be resolicited;

2 (p) Client and case files maintained by the Department of Public Advocacy or any
3 person or entity contracting with the Department of Public Advocacy for the
4 provision of legal representation under KRS Chapter 31;

5 (q) Except as provided in KRS 61.168, photographs or videos that depict the
6 death, killing, rape, or sexual assault of a person. However, such photographs
7 or videos shall be made available by the public agency to the requesting party
8 for viewing on the premises of the public agency, or a mutually agreed upon
9 location, at the request of;

10 1. a. Any victim depicted in the photographs or videos, his or her
11 immediate family, or legal representative;

12 b. Any involved insurance company or its representative; or

13 c. The legal representative of any involved party;

14 2. Any state agency or political subdivision investigating official
15 misconduct; or

16 3. A legal representative for a person under investigation for, charged with,
17 pled guilty to, or found guilty of a crime related to the underlying
18 incident. The person under investigation for, charged with, pled guilty
19 to, or found guilty of a crime related to the underlying incident or their
20 immediate family shall not be permitted to have access to the
21 photographs or videos;~~and~~

22 (r) Communications of a purely personal nature unrelated to any governmental
23 function; and

24 (s) Public records containing personally identifiable information of a public
25 officer or his or her immediate family member if that officer has notified
26 the public agency responsible for those records that he or she does not want
27 the information to be made public. Notification by the public officer shall be

valid for three (3) years, may be renewed, and shall include:

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

2. The names and information of the immediate family members whose information shall be excluded; and

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

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

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

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

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

(6) When material is made available pursuant to a request under subsection (1)(q) of

1 this section, the public agency shall not be required to make a copy of the recording
 2 except as provided in KRS 61.169, and the requesting parties shall not be limited in
 3 the number of times they may view the material.

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

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

7 (a) 1. Upon notification by a public officer, a public agency shall not post,
 8 re-post, publish, or otherwise make known the personally identifiable
 9 information of that public officer or his or her immediate family
 10 members;

11 2. Notification shall include:

12 a. A written request that the information be excluded from
 13 disclosure;

14 b. The names and information of the immediate family members
 15 whose information shall be excluded; and

16 c. A letter from the employer of the public officer verifying present
 17 or past employment in a public officer position;

18 3. Any public officer who has requested that his or her information be
 19 made confidential may withdraw the request or permit release of his
 20 or her personally identifiable information at any time;

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

26 (c) If a public agency cannot redact and remove the personally identifiable
 27 information within three (3) business days, then it shall notify the public

officer, in writing, within twenty-four (24) hours of the failure to redact or remove the information, specifically identify the information that was not redacted or removed, and state the reasons that redaction or removal was not practicable.

(2) The exemptions in this section are supplemental to the exemptions provided in Section 2 of this Act and shall not be deemed to replace any exemptions or personal privacy protections provided in Section 2 of this Act and any other exemption or personal privacy protections provided by law.

(3) Nothing in this section shall prevent a public agency from using personally identifiable information as required to perform the routine functions of the agency or routine functions necessary to complete business transactions between consumers when the transaction involves a public officer or his or her immediate family members.

➔SECTION 4. A NEW SECTION OF KRS 61.870 TO 61.884 IS CREATED TO READ AS FOLLOWS:

Any public officer who has been convicted of or entered a plea of guilty to any felony or criminal offense against a victim who is a minor as defined in KRS 17.500, and the immediate family members of that public officer, shall not be entitled to the protections provided in Section 2 and 3 of this Act.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

(1) For the purposes of this section:

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

(b) "Immediate family member" has the same meaning as in Section 1 of this

1 Act;

2 (c) "Personally identifiable information" has the same meaning as in Section 1
 3 of this Act; and

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

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

7 (a) The person disseminates the personally identifiable information of the
 8 public officer or his or her immediate family member:

9 1. In response to a decision or action, or to influence or impact any
 10 future action, taken by the public officer as part of his or her official
 11 duties; and

12 2. With the intent to intimidate, harass, threaten, or alarm; and

13 (b) The dissemination places the public officer or his or her immediate family
 14 member in reasonable fear of physical injury, or reasonable fear of harm to
 15 their property.

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

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

22 (5) Nothing in this section shall be construed to impose liability on a broadband
 23 Internet access service provider, a telecommunications service provider, an
 24 interconnected VoIP provider, or a mobile service provider as defined in 47
 25 U.S.C. sec. 153, a commercial mobile service provider as defined in 47 U.S.C. sec.
 26 332(d), or a cable operator as defined in 47 U.S.C. sec. 522, when acting in its
 27 capacity as a provider of those services.

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