

**61.880 Denial of inspection -- Role of Attorney General.**

- (1) If a person enforces KRS 61.870 to 61.884 pursuant to this section, he or she shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section. Each public agency, upon any request for records made under KRS 61.870 to 61.884, shall determine within five (5) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision. An agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his or her authority, and it shall constitute final agency action.
- (2)
  - (a) If a complaining party wishes the Attorney General to review a public agency's denial of a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection. If the public agency refuses to provide a written response, a complaining party shall provide a copy of the written request. The Attorney General shall review the request and denial and issue within twenty (20) days, excepting Saturdays, Sundays and legal holidays, a written decision stating whether the agency violated provisions of KRS 61.870 to 61.884.
  - (b) In unusual circumstances, the Attorney General may extend the twenty (20) day time limit by sending written notice to the complaining party and a copy to the denying agency, setting forth the reasons for the extension, and the day on which a decision is expected to be issued, which shall not exceed an additional thirty (30) work days, excepting Saturdays, Sundays, and legal holidays. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper resolution of an appeal:
    1. The need to obtain additional documentation from the agency or a copy of the records involved;
    2. The need to conduct extensive research on issues of first impression; or
    3. An unmanageable increase in the number of appeals received by the Attorney General.
  - (c) On the day that the Attorney General renders his or her decision, he or she shall mail a copy to the agency and a copy to the person who requested the record in question. The burden of proof in sustaining the action shall rest with the agency, and the Attorney General may request additional documentation from the agency for substantiation. The Attorney General may also request a copy of the records involved, but they shall not be disclosed.
- (3) Each agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding the enforcement of KRS 61.870 to 61.884. The Attorney General shall not, however, be named as a party in any Circuit Court

actions regarding the enforcement of KRS 61.870 to 61.884, nor shall he or she have any duty to defend his or her decision in Circuit Court or any subsequent proceedings.

- (4) If a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees, delay past the five (5) day period described in subsection (1) of this section, excessive extensions of time, or the misdirection of the applicant, the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.
- (5)
  - (a) A party shall have thirty (30) days from the day that the Attorney General renders his or her decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under KRS 61.882.
  - (b) If an appeal is not filed within the thirty (30) day time limit, the Attorney General's decision shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained.

**Effective:** June 29, 2021

**History:** Amended 2021 Ky. Acts ch. 160, sec. 5, effective June 29, 2021. -- Amended 1994 Ky. Acts ch. 262, sec. 6, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 163, sec. 6, effective July 14, 1992. -- Created 1976 Ky. Acts ch. 273, sec. 6.