

CHAPTER 160**(HB 312)**

AN ACT relating to public records.

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

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

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

- (1) "Public agency" means:
 - (a) Every state or local government officer;
 - (b) Every state or local government department, division, bureau, board, commission, and authority;
 - (c) Every state or local legislative board, commission, committee, and officer;
 - (d) Every county and city governing body, council, school district board, special district board, and municipal corporation;
 - (e) Every state or local court or judicial agency;
 - (f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;
 - (g) Any body created by state or local authority in any branch of government;
 - (h) Any body which, within any fiscal year, derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds. However, any funds derived from a state or local authority in compensation for goods or services that are provided by a contract obtained through a public competitive procurement process shall not be included in the determination of whether a body is a public agency under this subsection;
 - (i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof;
 - (j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and
 - (k) Any interagency body of two (2) or more public agencies where each public agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this subsection;
- (2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned or maintained by or for a body referred to in subsection (1)(h) of this section that are not related to functions, activities, programs, or operations funded by state or local authority;
- (3)
 - (a) "Software" means the program code which makes a computer system function, but does not include that portion of the program code which contains public records exempted from inspection as provided by KRS 61.878 or specific addresses of files, passwords, access codes, user identifications, or any other mechanism for controlling the security or restricting access to public records in the public agency's computer system.
 - (b) "Software" consists of the operating system, application programs, procedures, routines, and subroutines such as translators and utility programs, but does not include that material which is prohibited from disclosure or copying by a license agreement between a public agency and an outside entity which supplied the material to the agency;

- (4) (a) "Commercial purpose" means the direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee.
- (b) "Commercial purpose" shall not include:
1. Publication or related use of a public record by a newspaper or periodical;
 2. Use of a public record by a radio or television station in its news or other informational programs; or
 3. Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties;
- (5) "Official custodian" means the chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control;
- (6) "Custodian" means the official custodian or any authorized person having personal custody and control of public records;
- (7) "Media" means the physical material in or on which records may be stored or represented, and which may include, but is not limited to paper, microform, disks, diskettes, optical disks, magnetic tapes, and cards;
- (8) "Mechanical processing" means any operation or other procedure which is transacted on a machine, and which may include, but is not limited to a copier, computer, recorder or tape processor, or other automated device; ~~and~~
- (9) "Booking photograph and photographic record of inmate" means a photograph or image of an individual generated by law enforcement for identification purposes when the individual is booked into a detention facility as defined in KRS 520.010 or 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..*

➔Section 2. KRS 61.872 is amended to read as follows:

- (1) All public records shall be open for inspection by any *resident of the Commonwealth* ~~person~~, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No *resident of the Commonwealth* ~~person~~ shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.
- (2) (a) Any *resident of the Commonwealth* ~~person~~ shall have the right to inspect public records. The official custodian may require *a written* ~~;~~
- ~~(a) — Written~~ application, signed by the applicant and with his name printed legibly on the application, describing the records to be inspected. *The official custodian may require the applicant to provide a statement in the written application of the manner in which the applicant is a resident of the Commonwealth under paragraphs (a) to (f) of subsection (10) of Section 1 of this Act.*
- (b) The written application shall be:
1. Hand delivered; ~~;~~
 2. Mailed; ~~;~~ ~~or~~

3. Sent via facsimile~~[to the public agency]~~; *or*
 4. *Sent via e-mail to the public agency's official custodian of public records or his or her designee at the e-mail address designated in the public agency's rules and regulations adopted pursuant to Section 3 of this Act*~~]~~
- ~~(b) Facsimile transmission of the written application described in paragraph (a) of this subsection; or~~
- ~~(c) E-mail of the application described in paragraph (a) of this subsection].~~
- (c) *A public agency shall not require the use of any particular form for the submission of an open records request, but shall accept for any request the standardized form developed under subsection (4) of Section 3 of this Act.*
- (3) *A resident of the Commonwealth*~~[person]~~ may inspect the public records:
- (a) During the regular office hours of the public agency; *or*
 - (b) By receiving copies of the public records from the public agency through the mail. The public agency shall mail copies of the public records to a person whose residence or principal place of business is outside the county in which the public records are located after he precisely describes the public records which are readily available within the public agency. If the *resident of the Commonwealth*~~[person]~~ requesting the public records requests that copies of the records be mailed, the official custodian shall mail the copies upon receipt of all fees and the cost of mailing.
- (4) If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records.
- (5) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed *five (5)*~~three (3)]~~ days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection.
- (6) If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.
- ➔Section 3. KRS 61.876 is amended to read as follows:
- (1) Each public agency shall adopt rules and regulations in conformity with the provisions of KRS 61.870 to 61.884 to provide full access to public records, to protect public records from damage and disorganization, to prevent excessive disruption of its essential functions, to provide assistance and information upon request and to *ensure*~~[insure]~~ efficient and timely action in response to application for inspection, and such rules and regulations shall include~~]~~ but shall not be limited to:
 - (a) The principal office of the public agency and its regular office hours;
 - (b) The title, *mailing address*, and *e-mail* address of the official custodian of the public agency's records;
 - (c) The fees, to the extent authorized by KRS 61.874 or other statute, charged for copies;
 - (d) The procedures to be followed in requesting public records.
 - (2) Each public agency shall display~~[a copy of its rules and regulations pertaining to public records]~~ in a prominent location accessible to the public, *including on its Web site*:
 - (a) *A copy of its rules and regulations pertaining to public records;*
 - (b) *The mailing address, e-mail address, and phone number of the official custodian of the records or his or her designee to which all requests for public records shall be made; and*
 - (c) *The form developed by the Attorney General under subsection (4) of this section that may be used to request public records.*

- (3) The Finance and Administration Cabinet may promulgate *administrative regulations pursuant to KRS Chapter 13A, pertaining to public records*,~~{uniform rules and regulations}~~ for all state administrative agencies, *except for the Legislative Research Commission and the Administrative Office of the Courts, each of which may promulgate administrative regulations for their respective agencies, pertaining to public records.*
- (4) *The Attorney General shall promulgate by administrative regulation under KRS Chapter 13A a standardized form that may be used to request public records from a public agency. The form shall not allow any request for information other than the following:*
- (a) *The name of the requesting party;*
 - (b) *The mailing or e-mail address of the requesting party, if copies of records are requested;*
 - (c) *Whether the request is for a commercial purpose;*
 - (d) *A description of the documents requested;*
 - (e) *A statement that the person making the request:*
 - 1. *Is a resident of the Commonwealth under subsection (10) of Section 1 of this Act; and*
 - 2. *The statement includes the manner in which the requester is a resident of the Commonwealth under paragraphs (a) to (f) of subsection (10) of Section 1 of this Act; and*
 - (f) *The signature of the requesting party.*
- (5) *The Attorney General shall make the form readily available to the public, including on the Attorney General's Web site. The form shall be accepted by every public agency for any request for public records made on or after the effective date of this Act.*

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

- (1) The following public records are excluded from the application of KRS 61.870 to 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. ~~{Upon and after July 15, 1992, }~~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. ~~{Upon and after July 15, 1992, }~~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
 - d. For the grant or review of a license to do business.
 3. The exemptions provided for in subparagraphs 1. and 2. of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;

- (d) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;
- (e) Public records which are developed by an agency in conjunction with the regulation or supervision of financial institutions, including but not limited to ~~+~~ banks, savings and loan associations, and credit unions, which disclose the agency's internal examining or audit criteria and related analytical methods;
- (f) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;
- (g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again;
- (h) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;
- (i) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;
- (j) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;
- (k) All public records or information the disclosure of which is prohibited by federal law or regulation *or state law*;
- (l) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly, including any information acquired by the Department of Revenue in tax administration that is prohibited from divulgence or disclosure under KRS 131.190;
- (m) 1. Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:
 - a. Criticality lists resulting from consequence assessments;
 - b. Vulnerability assessments;
 - c. Antiterrorism protective measures and plans;
 - d. Counterterrorism measures and plans;
 - e. Security and response needs assessments;
 - f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;

- g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency; and
 - h. Records when their disclosure will expose a vulnerability referred to in this subparagraph and that describe the exact physical location of hazardous chemical, radiological, or biological materials.
2. As used in this paragraph, "terrorist act" means a criminal act intended to:
 - a. Intimidate or coerce a public agency or all or part of the civilian population;
 - 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 there is a determination that the contract will not be resolicited;~~{and}~~
 - (p) ***Client and case files maintained by the Department of Public Advocacy or any person or entity contracting with the Department of Public Advocacy for the provision of legal representation under KRS Chapter 31; and***
 - (q) Communications of a purely personal nature unrelated to any governmental function.
- (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.

➔Section 5. KRS 61.880 is amended to read as follows:

- (1) If a person enforces KRS 61.870 to 61.884 pursuant to this section, he 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)**~~three (3)~~ 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)**~~three (3)~~ 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 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 decision, he 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 have any duty to defend his 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 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.

➔Section 6. KRS 7.119 is amended to read as follows:

- (1) Records in the custody of the Legislative Research Commission or the General Assembly shall be available for distribution to the public, or open for inspection by any person *who is a resident of the Commonwealth*.
- (2) As used in subsection (1) of this section, "records" includes bills and amendments introduced in the Senate or House of Representatives, Senate and House Journals, Acts of the General Assembly, roll call votes, final reports of committees, Kentucky Administrative Regulations, documents showing salary and expenses paid to members of the General Assembly and all employees of the legislative branch, contracts, receipts and work orders for repairs or renovations to legislative offices or facilities, items cataloged in the legislative library, the Legislative Record, and informational and educational materials offered by the public information office, including legislative videotapes and photographs, calendars, and meeting notices.
- (3) Requests for records ~~or other documents~~ in the custody of the Legislative Research Commission or the General Assembly *set forth in subsection (2) of this section* shall be directed to the director of the Legislative Research Commission, *who shall determine within five (5) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of the request whether to comply with the request, and shall, in writing notify the person making the request of his or her decision*. ~~[Except for KRS 61.880(3), provisions of the Open Records Act, KRS 61.870 to 61.884, shall apply to a request for inspection or copies of documents or other items not set forth in subsection (2) of this section, and except that]~~A request for a review ~~[under KRS 61.880]~~ of any determination by the director *regarding a request for records set forth in subsection (2) of this section* shall be made to the Legislative Research Commission, which shall issue its decision within thirty (30) days *of the first scheduled meeting held following receipt for review*. If the Legislative Research Commission does not issue its decision on a review of the director's determination within thirty (30) days *of the first scheduled meeting held following receipt of the request for review, the review shall be considered denied*~~[submission to it of the matter, the director's determination may be appealed to the Franklin Circuit Court within sixty (60) days of its issuance. For purposes of this subsection, any reference to the Attorney General in KRS 61.880 and 61.882 shall be read as the Legislative Research Commission]~~.
- (4) *If a request for records in the custody of the Legislative Research Commission or the General Assembly not described in subsection (2) of this section or in KRS 7.117 is made to the director of the Legislative Research Commission, those records shall not be subject to disclosure. A request for review of the denial of the disclosure shall be made to the Legislative Research Commission, which shall issue its decision within thirty (30) days of the first scheduled meeting held following receipt of the request for review. That decision shall be final and unappealable.*
- (5) *Once a request for records is made, and unless otherwise permitted by statute, if the Legislative Research Commission determines that a denial of disclosure related to that request was properly made, no member of the Commission, the General Assembly, or the staff of the Legislative Research Commission shall knowingly or intentionally disclose to any person the records that were the subject of the denied request. Violation of this subsection is a violation under KRS 6.734.*
- (6)
 - (a) *If a public agency other than the Legislative Research Commission receives a request for inspection of a public record that may fall under subsection (2) of this section, the official custodian of the records for the public agency shall notify the director of the Legislative Research Commission within two (2) days of receipt of the request. The official custodian of records for the public agency that received the request shall be required to respond to the request.*
 - (b) *If the Legislative Research Commission receives a request relating to a specific member of the General Assembly, the director shall notify that member within one (1) day of receipt of the request.*
- (7) *Nothing in this section shall be construed as a waiver or diminishment of any constitutional, common law, or statutory defenses, privileges, or immunities that may apply to any member of the General Assembly, legislative staff, legislative agency or entity, or any other member or employee of the legislative branch.*

Veto overridden March 29, 2021.