

CHAPTER 168

(HB 207)

AN ACT relating to internal police communications.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

(a) *"Wellness program" means a program created by a law enforcement agency to support the physical and mental health of law enforcement personnel; and*

(b) *"Early intervention system" means a methodology that identifies and addresses potentially problematic behaviors.*

(2) *A law enforcement agency may create its own wellness program in order to support the mental health and wellbeing of its employees. These programs may include but are not limited to an early intervention system, access to mental health counseling, crisis counseling, support systems, training, equipment, and technology necessary for an employee to perform his or her job.*

(3) *Any law enforcement agency that creates its own wellness program shall establish written policies and procedures for the program.*

(4) (a) *Except as provided in paragraph (b) of this subsection, all proceedings, records, opinions, conclusions, and recommendations arising from any aspect of a wellness program shall be confidential and privileged from disclosure, regardless of who possesses them. Under this confidentiality and privilege, the wellness program records or communications shall be subject to the same protections as any counselor-client privilege provided under the Kentucky Rules of Evidence in any criminal or civil proceeding. The participating officer or telecommunicator shall be the holder of the privilege.*

(b) *This privilege shall not apply:*

1. *To the disclosure of relevant information in response to a claim made by the holder of the privilege against a law enforcement agency related to programs or services provided by a wellness program under this section; or*

2. *When an officer's or telecommunicator's communication contains:*

a. *An explicit threat of suicide in which the participant shares an intent to die by suicide, a plan to carry out a suicide attempt by the participant, or a disclosure of the means by which the participant intends to carry out a suicide attempt. This paragraph shall not apply to any wellness program communication where the officer or telecommunicator solely shares that the participant is experiencing suicidal thoughts;*

b. *An explicit threat by a participant of imminent and serious physical injury and bodily harm or death to a clearly identified or reasonably identifiable victim;*

c. *Information related to the abuse or neglect of a child or an older adult or vulnerable individual that is required by law to be reported;*

d. *An admission of criminal conduct; or*

e. *Other information which is required by law to be disclosed.*

(c) *Nothing in this subsection shall be construed to restrict or limit the right to discover or use in any civil action any evidence, document, or record that is subject to discovery independently of the proceedings of the wellness program.*

(d) *A law enforcement agency may use anonymous data for research, statistical analysis, and educational purposes.*

➔Section 2. 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. 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
 - 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;
- (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;
- (q) Except as provided in KRS 61.168, photographs or videos that depict the death, killing, rape, or sexual assault of a person. However, such photographs or videos shall be made available by the public agency to the requesting party for viewing on the premises of the public agency, or a mutually agreed upon location, at the request of:
 - 1.
 - a. Any victim depicted in the photographs or videos, his or her immediate family, or legal representative;
 - b. Any involved insurance company or its representative; or
 - c. The legal representative of any involved party;
 - 2. Any state agency or political subdivision investigating official misconduct; or
 - 3. A legal representative for a person under investigation for, charged with, pled guilty to, or found guilty of a crime related to the underlying incident. The person under investigation for, charged with, pled guilty to, or found guilty of a crime related to the underlying incident or their immediate family shall not be permitted to have access to the photographs or videos;
- (r) ***Records confidentially maintained by a law enforcement agency in accordance with a wellness program, including an early intervention system, as described in Section 1 of this Act; and***
- (s) ~~(+)~~ 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 ***or her***. 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 this section, the public agency shall not be required to make a copy of the recording except as provided in KRS 61.169, and the requesting parties shall not be limited in the number of times they may view the material.

Signed by Governor April 4, 2023.