

200 KAR 1:020. Access to public records.

RELATES TO: KRS Chapter 61

STATUTORY AUTHORITY: KRS 61.876(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Finance and Administration Cabinet is authorized by KRS 61.876(3) to promulgate uniform rules governing public access to public records maintained by administrative agencies of the state government. This administrative regulation establishes the general rules to be followed by all state administrative agencies in affording public access to their records and by persons applying to inspect such records. This amendment adds the word diskettes to the definition of "public record" in accordance with Chapter 150, Section 2, 1986 Acts of the General Assembly, as requested by the Interim State Government Committee.

Section 1. General. Consistent with the provisions of KRS 61.870 to 61.884, the public records of all administrative agencies of the Kentucky State Government, except as provided in Section 4 of this administrative regulation, shall be open for inspection by any person in accordance with the procedures established by this administrative regulation.

Section 2. Definitions. The following terms shall have the meaning assigned herein:

(1) "State administrative agency" means every program cabinet, department and administrative body of the Kentucky State Government as defined by KRS 12.010, headed by, or whose membership is composed of, persons appointed by the Governor, and their component organizational subdivisions.

(2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs, diskettes, records or other documentary materials prepared, owned, used, in the possession of or retained by a state administrative agency, but does not include any records owned by a private person or corporation in the possession of a state administrative agency or an officer or employee thereof, and not related to any function, activity, program or operation funded by the state.

(3) "Official custodian" means the chief administrative officer of a state administrative agency who by virtue of his position, is responsible for the maintenance, care and keeping of all the public records of his agency, or if so designated in writing by the chief administrative officer of a state administrative agency, the head of each office, bureau, division or other organizational subdivision within a state administrative agency, who is responsible for the maintenance, care and keeping of all the public records of his organizational unit.

(4) "Custodian" means any officer or employee of a state administrative agency having public records in his personal custody and control.

Section 3.

(1) Any person may, on written application to the official custodian describing the records, inspect and make abstracts and memoranda of the contents of any of the public records, except those listed in Section 4 of this administrative regulation, of all state administrative agencies. Copies of any written material shall be furnished, on request, to any person requesting them, on payment of fee of ten (10) cents a page for each record copies; copies of photographs, maps and other nonwritten material, and records stored in computer files or libraries, shall be furnished to any person requesting them on payment of a fee equal to the actual cost to the agency of producing the copies. Persons requesting copies of records shall be advised of the total actual cost of copies of written material, and the actual, if known, or approximate cost or producing copies of nonwritten material or of records stored in computer files or libraries before the copies are prepared. The fee shall be collected before the copies are handed or sent to the person requesting them. The fees established herein shall not be collected, for copies of records requested in the course

of their employment by employees of state administrative agencies, and shall be inapplicable in cases of documents printed for sale for which a fee is fixed by or pursuant to law or which are customarily distributed without charge.

(2) The inspection of public records of state administrative agencies shall in all cases be made in the presence of an employee of the agency, on premises occupied by the agency having custody of the records, during the usual office hours of the particular office or other organizational unit having physical possession of the records. The official custodian of the records of each state administrative agency, and of each administrative subdivision of the agency, shall be responsible for the assignment of agency employees, as a duty in addition to their usual duties, to assist persons applying to inspect the public records of the agency and to insure protection of the records against damage and disorganization.

Section 4. The public records enumerated in subsections (1) through (10) of this section shall, except as provided herein, be subject to inspection only upon an Order of the Court of this Commonwealth or of the United States. The exemptions under this section notwithstanding, nothing herein shall prohibit or limit the exchange of public records or the sharing of information between state administrative agencies and other public agencies when the exchange of such records or sharing of such information will serve legitimate governmental needs or is necessary in the performance of legitimate governmental functions, nor shall the enumeration of any material herein prohibit disclosure of statistical information not readily identifiable of any person. If any public record contains material subject to public inspection only by court order, and other material not so excluded from public inspection, the custodian of the record shall, on application by any person for inspection of such record, segregate or remove the excluded material from the record and the nonexcluded material shall then be available for inspection in accordance with the application for inspection. The official custodian of the records of each state administrative agency shall generally exclude from public inspection, except by an order of court as provided in this section.

(1) Public records containing information of a personal nature where public disclosure would constitute a clearly unwarranted invasion of personal privacy.

(2) Records confidentially disclosed to an agency and compiled and maintained for: scientific research; in conjunction with an application for a loan; the administrative regulation of commercial enterprise, including mineral exploration records; unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential; or for the grant or review of a license to do business which if openly disclosed, would permit an unfair advantage to competitors of the subject enterprise, unless the disclosure or publication of such records is directed by law.

(3) Public records pertaining to the 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, relocated within, or expanding within the Commonwealth. (Provided, however, that this exemption shall not include applications filed with state administrative agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in subsection (2) of this section).

(4) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for an agency relative to the acquisition of real property, until such time as all of the property has been acquired.

(5) Test questions, scoring keys and other examination data used to administer a licensing examination, or an examination for employment before the examination is given or if it is to be given again.

(6) Centralized criminal history records maintained by the Kentucky Justice Cabinet and intelligence and investigative reports maintained by state criminal justice agencies except as provided in KRS 17.150, and records of law enforcement or administrative agencies compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information contained in such records would harm the agency by revealing the identity of informants not otherwise known or by the premature release of information to be used in a prospective prosecution or suit or an administrative adjudication. Except as provided by KRS 17.150, public records exempted under this subsection shall be open for inspection after adjudicative action is completed or a decision has been made to take no action.

(7) The official custodian shall have the burden of justifying with specificity a refusal of a demand for inspection of any public records covered by the exemptions provided in this subsection except centralized criminal history records maintained by the Kentucky Justice Cabinet. Preliminary drafts, notes, correspondence between state administrative agencies and private individuals, other than correspondence intended to give notice of final action by an agency.

(8) Preliminary recommendations and memoranda in which opinions are expressed or policies formulated or recommended.

(9) All public records or information, the disclosure of which is prohibited by federal law or regulation.

(10) Public records or information, the disclosure of which is prohibited or restricted or otherwise made confidential by the statutes of this Commonwealth.

Section 5. Application for Inspection of Public Records.

(1) Persons requesting to inspect public records of state administrative agencies shall file a written application describing the records requested to be inspected, on a form prescribed by the Finance and Administration Cabinet, with the official custodian of the records of the office of the agency having physical custody of the records. Agency employees shall assist, on request of the applicant, in completing the form; the applicant shall sign the application form. The application form shall include a receipt to be completed and signed by the custodian of the records for payment received for copies of records requested by applicants and one (1) copy of the receipt shall be furnished to the applicant.

(2) Application forms for the inspection of public records of state administrative agencies will be stocked by and available from the Central Stores of the Finance and Administration Cabinet. Each state administrative agency shall be responsible for obtaining from Central Stores an adequate supply of the application forms for use by each of its administrative subdivisions so that at all times there will be sufficient number of forms on hand to comply with requests for inspection of the agency's records.

Section 6. Agency Responsibility.

(1) Each state administrative agency shall display a copy of this administrative regulation in a prominent location in each of its offices to which the general public has access. Copies of this administrative regulation, suitable for posting, shall be printed and each agency shall be responsible for obtaining the number of copies of the printed administrative regulation required to comply with this section from the Central Stores of the Finance and Administration Cabinet.

(2) The printed copies of this administrative regulation shall bear the following caption which shall be appropriately completed by each agency and its subdivisions: NOTICE ADMINISTRATIVE REGULATIONS GOVERNING INSPECTION OF THE PUBLIC RECORDS OF THE

(Name of State Administrative Agency)

(Office, Bureau,

Division, etc.) Pursuant to KRS 61.870 to 61.884, the public is notified that, as provided herein, the public records of the above named Agency of the Commonwealth of Kentucky are open for inspection by any person on written application to _____ (name), _____ (title), official custodian of the public records of the _____ (state administrative agency) whose address is _____ or to _____ (name), _____ (title), official custodian of the public records of the _____, (office, bureau, division, etc.) whose address is _____, from ____ a.m. to ____ p.m., Monday through Friday, each week, except holidays. Application forms for the inspection of the public records of this agency will be furnished on request to any person by an employee in this office. Assistance in completing the application form will be provided by an employee on request. Applicants for the inspection of public records shall be advised of the availability of the records requested for inspection, and shall be notified in writing not later than three (3) working days after receipt of an application for inspection of any reason the records requested are not available for public inspection. Copies of written material in the public records of this agency shall be furnished to any person requesting them on payment of a fee of ten (10) cents a page; copies of nonwritten records (photographs, maps, material stored in computer files or libraries, etc.) shall be furnished on request, on payment of a charge equal to the actual cost of producing copies of such records by the most economic process not likely to damage or alter the record. This the _____ day of _____, 19__.

(Agency Head or Designated Representative)

(3) The official custodian of records requested for public inspection shall promptly determine the availability of such records for inspection; if it is determined that the records are not available for inspection, the applicant, if present, will be orally advised, subject to written confirmation, or notified in writing, not later than three (3) working days after the date of receipt of the written application for inspection of the records of the reason or reasons why the records are not available for inspection. If the record sought is in active use, in storage or not otherwise available, the applicant will be advised of the reason for the delay in providing access to the record and of the earliest practicable date, time and place that the record will be available for inspection. If an application for inspection of a record is denied because it is of a kind, or contains material enumerated in Section 4 of this administrative regulation, the official custodian shall advise the applicant in writing of the reason for denial, in whole or in part, and shall include a statement of the specific exception contained in Section 4 of this administrative regulation, and in KRS 61.878, authorizing denial of the application and an explanation of how the exception applies to the record withheld. A copy, signed by the official custodian of the records, of the writing denying any application for the inspection of the public records of any state administrative agency, shall be sent to the Attorney General. If any person who has been denied the right to inspect any public records of a state administrative agency requests the Attorney General to review the denial of his application, the agency shall furnish such additional documentation concerning the circumstances of the denial of inspection of the records and a copy of the records, as the Attorney General may request. If any person denied the right to inspect the records of a state administrative agency elects to file suit against an agency to compel inspection of the records denied, the agency shall immediately advise the Attorney General of the action and forward to the Attorney General on the day served, a copy of the Summons in the action.

(3 Ky.R. 175; eff. 9-1-76; Am. 16 Ky.R. 373; eff. 10-11-89; Crt eff. 2-10-2020.)