

502 KAR 30:070. Inspection of criminal history record information by record subject.

RELATES TO: KRS 17.140, 17.150, 61.872, 61.878, 61.884

STATUTORY AUTHORITY: KRS 15A.150, 17.080, 17.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.150(5) makes that portion of KRS Chapter 61 which deals with administrative and judicial remedies for the inspection of public records and penalties appealable. KRS 61.884 allows the individual record subject to access CHRI relating to him or other data in which the record subject is mentioned by name. This administrative regulation establishes guidelines by which CHRI may be accessed by the individual record subject.

Section 1. These administrative regulations shall provide for the initiation of access/review procedures at each of the Kentucky State Police Posts throughout the Commonwealth with the exception of Frankfort, Post 12. The Records Section shall serve as the location for record access/review for individuals near Frankfort. Access/review procedure shall be uniform throughout the various designated sites.

Section 2. Access/Review Procedure. The record subject shall complete the "Request for Review" form provided at the respective access/review site. A duplicate copy of said form shall be provided to the requester, or requester's legal counsel. One set of rolled fingerprints from the requester on a completed KSP Form 22, will be forwarded to Records where submitted fingerprints will be used to verify the record subject's identity. The Records staff shall note the date of the request as indicated on the "Request for Review" form and shall schedule the record review within three (3) working days of the receipt of the request, unless a detailed explanation of the cause is given for further delay along with the place, time and earliest date on which the CHRI will be available for inspection. The requester shall be notified forthwith by Records of the scheduled date of review. All record reviews will be conducted from 8 a.m. through 4 p.m., Monday through Friday with the exception of legal holidays, at the designated State Police Post or the Records Section. Records shall be returned to the post of the respective access/review request, the "Request for Review" form, the fingerprints taken from the individual for identity verification, a copy of the letter to the record subject scheduling the review date, and a certified copy of the individual's criminal history record.

Section 3. Record Reviewing Procedures. In order to insure that the subject appearing at the Post for the scheduled review of the CHRI supplied from Records is in fact the same person the submitted set of fingerprints were obtained from, visual recognition is required by Post personnel before allowing the individual to actually access the CHRI. The individual, and his attorney (if written approval is submitted by the record subject) shall be allowed to inspect the copy of the CHRI. Reasonable assistance shall be provided by Post personnel to insure understanding of the CHRI. After the record subject has inspected the CHRI, Post personnel should ascertain if a challenge of the content of the records will be initiated. Basis for challenge shall stem from erroneous information, misinformation, or fictitious information. The individual shall be informed that a challenge must be initiated within thirty (30) working days of the actual review. If a challenge is not initiated at the time of review, a copy of the individual's record will be retained at the Post and will be filed with the individual's "Request for Review" form in a manner convenient to the Post. Information regarding the "Request for Review" shall remain at the Post not less than thirty (30) working days from the actual date of review to allow the individual ample time to challenge the record content. If, after thirty (30) working days a challenge has not been initiated, all material regarding the review shall be returned to Records where a permanent record of the review shall be maintained.

Section 4. Challenge of Record Contents. If the record subject desires to challenge the contents of the record, the individual shall complete the "Challenge of Record" form (bottom portion of the original form). A duplicate copy should be provided to the individual. It should be noted on the form if the individual requests a copy of the record for purposes of challenge. A copy of the individual's record furnished through the Post by Records shall be given to the individual if a challenge is initiated and the individual states a need for a copy of the record for purposes of pursuing a challenge. The copy provided by Records shall be permanently marked or stamped to indicate that the copy is for the purpose of challenge and that any other use thereof would be in violation of federal and state law. The Post shall forward to Records a "Challenge of Record" form and any documents submitted by the individual in support of the challenge.

Section 5. Processing of Challenge by Records. Records shall conduct a comparison of the information under challenge with the original input documents and information contained in the repository files. Any errors or omissions discovered in the repository files shall be corrected. If no error is found, Records shall forward a copy of the original challenge form, a copy of the record as contained in the files, and any other relevant information to the agency or agencies which the Record Section's records indicate as contributing the information under challenge and shall request them to examine in an expeditious manner all relevant files to determine the validity of the challenge. Records shall notify the individual or his legal counsel in writing of the status of said challenge within thirty (30) working days of the challenge date. Status of challenge includes, but is not limited to, notice of clarification of record, expungement of erroneous data, substantiating record or ongoing research process.

Section 6. Administrative Review. If the record subject is dissatisfied with the action taken by Records, the individual may request an Administrative Review. This request shall be submitted in writing and directed to the attention of the Commander of the Records Section. The Commander of the Records Section shall notify in written form the Administrative Review Officer of the request for Administrative Review upon receipt of such request. An individual within the Department of State Police and designated by the Commissioner as the Administrative Review Officer shall review the individual's record in the same manner as performed by Records. The Administrative Review Officer shall notify the individual, in writing, of the decision of the Administrative Review. This notification shall be within thirty (30) days of submission of the written request for the Administrative Review. Any further appeal by the individual will be directed to the court for judicial review.

Section 7. Action Taken if Error or Omission Found Within Record. Records shall correct necessary documents maintained in custody. Notification of all known criminal justice recipients of the erroneous information within the past year and corrections shall be effected in written form. Records shall furnish the individual, upon request, a written list of known noncriminal justice recipients within the past year and of corrections to be made. Records will require that the agency originating the erroneous information notify all known criminal justice recipients within the past year and of corrections to be made. Further, the originating agency will be requested to furnish the individual, upon request, a written list of all known noncriminal justice recipients of erroneous information within the past year.

(11 Ky.R. 1720; eff. 6-4-85.)