

**161.585 Member's account confidential -- Release of certain information from accounts of current or former legislators -- Medical records on file confidential -- Production of records in response to a subpoena or court order. (Declared void -- See LRC Note Below)**

- (1) Each member's or annuitant's account shall be administered in a confidential manner, and specific data regarding a member or annuitant shall not be released for publication, except that:
  - (a) The member or annuitant may authorize the release of his or her account information;
  - (b) The board of trustees may release member or annuitant account information to the employer or to other state and federal agencies as it deems necessary or in response to a lawful subpoena or order issued by a court of law; or
  - (c)
    1. Upon request by any person, the system shall release the following information from the accounts of any member or annuitant of the Kentucky Teachers' Retirement System, if the member or annuitant is a current or former officeholder in the Kentucky General Assembly:
      - a. The first and last name of the member or annuitant;
      - b. The status of the member or annuitant, including but not limited to whether he or she is a contributing member, a member who is not contributing but has not retired, a retiree receiving a monthly retirement allowance, or a retiree who has returned to work following retirement with an agency participating in the system;
      - c. If the individual is an annuitant, the monthly retirement allowance that he or she was receiving at the end of the most recently completed fiscal year;
      - d. If the individual is a member who has not yet retired, the estimated monthly retirement allowance that he or she is eligible to receive on the first date he or she would be eligible for an unreduced retirement allowance, using his or her service credit, accumulated account balance, and final average salary at the end of the most recently completed fiscal year; and
      - e. The current or last participating employer of the member or annuitant, if applicable.
    2. No information shall be disclosed under this paragraph from an account that is paying benefits to a beneficiary due to the death of a member or annuitant.
- (2) The release of information under subsection (1)(c) of this section shall not constitute a violation of the Open Records Act, KRS 61.870 to 61.884.
- (3) Medical records which are included in a member's or annuitant's file maintained by the Teachers' Retirement System are confidential and shall not be released unless authorized by the member or annuitant in writing or as otherwise provided by law or in response to a lawful subpoena or order issued by a court of law.

- (4) (a) When a subpoena is served upon any employee of the Kentucky Teachers' Retirement System requiring the production of any data, information, or records, it is sufficient if the employee of the Kentucky Teachers' Retirement System charged with the responsibility of being custodian of the original, or his or her designated staff, delivers within five (5) working days by certified mail or by personal delivery to the person specified in the subpoena either of the following:
1. Legible and durable copies of records certified by the employee or designated staff; or
  2. An affidavit stating the information required by the subpoena.
- (b) The production of records or an affidavit shall be in lieu of any personal testimony of any employee of the Kentucky Teachers' Retirement System unless, after the production of records or an affidavit, a separate subpoena is served upon the retirement system specifically directing the testimony of an employee of the retirement system. When a subpoena is served on any employee of the retirement system requiring the employee to give testimony or produce records for any purpose, in the absence of a court order requiring the testimony of or production of records by a specific employee, the system may designate an employee to give testimony or produce records upon the matter referred to in the subpoena. The board of trustees may promulgate an administrative regulation for the recovery of reasonable travel and administrative expenses for those occasions when an employee of the retirement system is required to travel from his or her home or office to provide testimony or records. Recoverable expenses may include the wages, salary, and overtime paid to the employee by the retirement system for the period of time that the employee is away from the office. The cost of these expenses shall be borne by the party issuing the subpoena compelling the employee's travel. The board of trustees may also promulgate an administrative regulation establishing a reasonable fee for the copying, compiling, and mailing of requested records.
- (c) The certification required by this subsection shall be signed before a notary public by the employee and shall include the full name of the member or annuitant, the member or annuitant identification number assigned to the member or annuitant by the retirement system, and a legend substantially to the following effect: "The records are true and complete reproductions of the original, microfiched, or electronically stored records which are housed in the retirement system's office. This certification is given in lieu of the undersigned's personal appearance."
- (d) When an affidavit or copies of records are personally delivered, a receipt shall be presented to the person receiving the records for his or her signature and shall be immediately signed and returned to the person delivering the records. When an affidavit or copies of records are sent via certified mail, the receipt used by the postal authorities shall be sufficient to prove receipt of the affidavit or copies of records.

- (e) When the affidavit or copies of records are delivered to a party for use in deposition they shall, after termination of the deposition, be delivered personally or by certified mail to the clerk of the court or other body before which the action or proceeding is pending.
  - (f) Upon completion of delivery by the retirement system of copies of records by their deposit in the mail or by their personal delivery to the requesting party, the retirement system shall cease to have any responsibility or liability for the records and their continued maintenance in a confidential manner.
  - (g) Records of the Kentucky Teachers' Retirement System that are susceptible to reproduction may be proved as to foundation, identity, and authenticity without preliminary testimony, by use of legible and durable copies, certified in accordance with the provisions of this subsection.(h) The provisions of this subsection shall not be construed to prohibit the Kentucky Teachers' Retirement System from asserting any exemption, exception, or relief provided under the Kentucky Rules of Civil Procedure or other applicable law.
- (5) For purposes of this section, "records" includes retirement estimates, affidavits, and other documents prepared by the Kentucky Teachers' Retirement System in response to information requested in a lawful subpoena or order issued by a court of law.

**Effective:** July 14, 2018

**History:** Amended 2018 Ky. Acts ch. 107, sec. 66, effective July 14, 2018. -- Amended 2017 Ky. Acts ch. 4, sec. 2, effective January 9, 2017. -- Amended 2010 Ky. Acts ch. 148, sec. 11, effective July 15, 2010; and ch. 164, sec. 8, effective July 1, 2010. -- Amended 1990 Ky. Acts ch. 442, sec. 12, effective July 1, 1990; and ch. 476, Pt. V, sec. 521, effective July 13, 1990. -- Created 1980 Ky. Acts ch. 206, sec. 16, effective July 1, 1980.

**Legislative Research Commission Note (7/1/2010).** This section was amended by 2010 Ky. Acts chs. 148 and 164 which are in conflict in their use of the terms "documents" and "records" in this section. Pursuant to KRS 446.250, Acts ch. 164 which was last enacted by the General Assembly prevails; however, four instances of the term "documents" in subsection (4)(b) of this section have been changed in codification to "records" in order to use the term consistently and in accordance with its meaning as set forth in subsection (1) of this section. This change was made by the Reviser of Statutes under the authority of KRS 7.136(1).

**Legislative Research Commission Note (7/13/90).** The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

**Legislative Research Commission Note (12/13/2018).** On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.