

65.037 Definitions -- Affidavit in lieu of lost, damaged, or destroyed local government record -- Good-faith attempt at replacement or re-creation -- Contents of affidavit -- Exception.

- (1) As used in this section:
 - (a) "Government entity" means an entity enumerated in KRS 12.020 or the Legislative Research Commission;
 - (b) "Legislative body" means the city commission, board of commissioners, city council, or board of alderman of a city; the fiscal court of a county; the board of a special purpose governmental entity, fire district, or volunteer fire department; or the legislative body of an urban-county government, charter county government, unified local government, or consolidated local government;
 - (c) "Local government" means a city, county, urban-county government, charter county government, unified local government, consolidated local government, special purpose governmental entity as defined in KRS 65A.010, or fire district operating under KRS Chapter 75 or volunteer fire department operating under KRS Chapter 273 which reports to the Kentucky Fire Commission under KRS Chapter 95A; and
 - (d) "Record" means a record, document, data, or information required to be produced by a local government no matter the format. "Record" shall not include any record required under:
 1. KRS Chapter 422;
 2. KRS Chapters 131 to 144, or any record ancillary to tax collection;
 3. KRS Chapters 116 to 121A, or any record ancillary to elections of any kind;
 4. KRS Chapter 382, or any record ancillary to conveyances and encumbrances of property;
 5. KRS Chapter 213, or any record ancillary to the collection of vital statistics or the reporting of deaths and diseases; or
 6. KRS Chapters 431 to 441, or any record ancillary to the administration of persons held in local correctional facilities.
- (2) If a record required to be produced by a local government is lost, damaged, or destroyed, under circumstances other than as set out in KRS 519.060 when a person tampers with a record with the intent of invoking the provisions of this section, then the legislative body of the local government, in lieu of presenting the record itself, may provide an affidavit that shall be sufficient to serve as being in compliance with any statute or administrative regulation promulgated under KRS Chapter 13A that requires the local government to transmit a record to a government entity. Any affidavit presented to a government entity that is in substantial compliance with this section shall be sufficient to consider the local government as effectively having transmitted that record, and a penalty for noncompliance shall not be assessed. The affidavit shall only serve to satisfy any requirement based solely on the fact of the transmission or receipt of the record.

- (3) A local government shall make a good-faith attempt at replacing or re-creating the record that has been lost, damaged, or destroyed. A good-faith effort shall include at least bona fide attempts at:
 - (a) Contacting the individual or entity in charge of producing or storing the record for replacement;
 - (b) Reproducing the data that constituted the record and re-creating the record; and
 - (c) Contacting an individual or entity that possesses a copy or an additional original of the record to acquire a copy for replacement.
- (4) If a bona fide attempt or attempts at replacing or re-creating the record in its entirety is unsuccessful, then the legislative body of the local government may proceed with filing the affidavit with the government entity, which shall contain:
 - (a) The statutory citation requiring transmission of the record which has been lost, damaged, or destroyed and a description of the general contents of what was required to be recorded;
 - (b) A description of the circumstances surrounding the loss, damage, or destruction of the record;
 - (c) A detailed description of the specific efforts toward reconstructing the record as set out in subsection (3) of this section; and
 - (d) A citation of any data or information that the city has been able to replace or reconstruct from the original record, and the data or information itself shall be included as an attachment to the affidavit.
- (5) The affidavit shall be in the form of a resolution passed by the legislative body of the local government.
- (6) Nothing in this section shall prevent a government entity from requiring that the local government reproduce the information contained in the record if the government entity determines that information is necessary for governmental operations. A government entity shall not require the local government to reproduce the information contained in the record if that information is received only for archival purposes or used for incidental data collection.

Effective: July 14, 2022

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Legislative Research Commission Note (7/14/2022). Under the authority of KRS 7.136(1), the Reviser of Statutes has altered the format in subsection (1) of this statute during codification to place the terms in alphabetical order. The words in the text were not changed.