

1 AN ACT relating to public records for economic development.

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

3 ➔Section 1. KRS 61.872 is amended to read as follows:

- 4 (1) All public records shall be open for inspection by any resident of the  
5 Commonwealth~~[person]~~, except as otherwise provided by KRS 61.870 to 61.884,  
6 and suitable facilities shall be made available by each public agency for the exercise  
7 of this right. No resident of the Commonwealth~~[person]~~ shall remove original  
8 copies of public records from the offices of any public agency without the written  
9 permission of the official custodian of the record.
- 10 (2) Any resident of the Commonwealth~~[person]~~ shall have the right to inspect public  
11 records. The official custodian may require written application, signed by the  
12 applicant and with his name printed legibly on the application, describing the  
13 records to be inspected. The application shall be hand delivered, mailed, or sent via  
14 facsimile to the public agency.
- 15 (3) A resident of the Commonwealth~~[person]~~ may inspect the public records:
- 16 (a) During the regular office hours of the public agency; or
- 17 (b) By receiving copies of the public records from the public agency through the  
18 mail. The public agency shall mail copies of the public records to a person  
19 whose residence or principal place of business is outside the county in which  
20 the public records are located after he precisely describes the public records  
21 which are readily available within the public agency. If the resident of the  
22 Commonwealth~~[person]~~ requesting the public records requests that copies of  
23 the records be mailed, the official custodian shall mail the copies upon receipt  
24 of all fees and the cost of mailing.
- 25 (4) If the person to whom the application is directed does not have custody or control of  
26 the public record requested, that person shall notify the applicant and shall furnish  
27 the name and location of the official custodian of the agency's public records.

1 (5) If the public record is in active use, in storage or not otherwise available, the official  
2 custodian shall immediately notify the applicant and shall designate a place, time,  
3 and date for inspection of the public records, not to exceed three (3) days from  
4 receipt of the application, unless a detailed explanation of the cause is given for  
5 further delay and the place, time, and earliest date on which the public record will  
6 be available for inspection.

7 (6) If the application places an unreasonable burden in producing public records or if  
8 the custodian has reason to believe that repeated requests are intended to disrupt  
9 other essential functions of the public agency, the official custodian may refuse to  
10 permit inspection of the public records or mail copies thereof. However, refusal  
11 under this section shall be sustained by clear and convincing evidence.

12 **(7) If a resident of the Commonwealth is a party to a civil lawsuit with the**  
13 **Commonwealth or any of its agencies, then that resident or anyone on his or her**  
14 **behalf shall not request records obtainable through the civil discovery process but**  
15 **shall use the civil discovery process to obtain those records that are pertinent to**  
16 **the lawsuit.**

17 ➔Section 2. KRS 61.878 is amended to read as follows:

18 (1) The following public records are excluded from the application of KRS 61.870 to  
19 61.884 and shall be subject to inspection only upon order of a court of competent  
20 jurisdiction, except that no court shall authorize the inspection by any party of any  
21 materials pertaining to civil litigation beyond that which is provided by the Rules of  
22 Civil Procedure governing pretrial discovery:

23 (a) Public records containing information of a personal nature where the public  
24 disclosure thereof would constitute a clearly unwarranted invasion of personal  
25 privacy;

26 (b) Records confidentially disclosed to an agency and compiled and maintained  
27 for scientific research. This exemption shall not, however, apply to records the

- 1 disclosure or publication of which is directed by another statute;
- 2 (c) 1. ~~Upon and after July 15, 1992,~~ Records confidentially disclosed to an
- 3 agency or required by an agency to be disclosed to it, generally
- 4 recognized as confidential, ~~or~~ proprietary, **or a trade secret** which if
- 5 openly disclosed would permit an unfair commercial advantage to **any**
- 6 **person** ~~competitors of the entity that disclosed the records~~;
- 7 2. ~~Upon and after July 15, 1992,~~ Records confidentially disclosed to an
- 8 agency or required by an agency to be disclosed to it, generally
- 9 recognized as confidential, ~~or~~ proprietary, **or a trade secret, including**
- 10 **but not limited to financial information, information regarding the**
- 11 **identity or investment interest of shareholders, and present or future**
- 12 **business plans,** which are compiled and maintained:
- 13 a. In conjunction with an application for or the administration of a
- 14 loan or grant;
- 15 b. In conjunction with an application for or the administration of
- 16 assessments, incentives, inducements, and tax credits as described
- 17 in KRS Chapter 154;
- 18 c. In conjunction with the regulation of commercial enterprise,
- 19 including mineral exploration records, unpatented, secret
- 20 commercially valuable plans, appliances, formulae, or processes,
- 21 which are used for the making, preparing, compounding, treating,
- 22 or processing of articles or materials which are trade commodities
- 23 obtained from a person; or
- 24 d. For the grant or review of a license to do business **or participate in**
- 25 **an activity that is regulated by a public agency;** ~~or~~
- 26 3. **Information declared confidential by the Kentucky Economic**
- 27 **Development Finance Authority pursuant to an administrative**

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regulation; and

4. Records that pertain to proposed economic development incentives not adopted in final action through acceptance by the grantee and approval by the relevant public agency.

5. The exemptions provided for in subparagraphs 1. ~~to 4.~~ 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 or locating in, relocating within, or expanding within states, territories, or countries with which the Commonwealth had a reciprocal economic development agreement at the time of the creation or receipt of the records. 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

- 1 before the exam is given or if it is to be given again;
- 2 (h) Records of law enforcement agencies or agencies involved in administrative  
3 adjudication that were compiled in the process of detecting and investigating  
4 statutory or regulatory violations if the disclosure of the information would  
5 harm the agency by revealing the identity of informants not otherwise known  
6 or by premature release of information to be used in a prospective law  
7 enforcement action or administrative adjudication. Unless exempted by other  
8 provisions of KRS 61.870 to 61.884, public records exempted under this  
9 provision shall be open after enforcement action is completed or a decision is  
10 made to take no action; however, records or information compiled and  
11 maintained by county attorneys or Commonwealth's attorneys pertaining to  
12 criminal investigations or criminal litigation shall be exempted from the  
13 provisions of KRS 61.870 to 61.884 and shall remain exempted after  
14 enforcement action, including litigation, is completed or a decision is made to  
15 take no action. The exemptions provided by this subsection shall not be used  
16 by the custodian of the records to delay or impede the exercise of rights  
17 granted by KRS 61.870 to 61.884;
- 18 (i) Preliminary drafts, notes, correspondence with private individuals, other than  
19 correspondence which is intended to give notice of final action of a public  
20 agency;
- 21 (j) Preliminary recommendations, and preliminary memoranda in which opinions  
22 are expressed or policies formulated or recommended *which are not*  
23 *incorporated in the final findings, order, or record;*
- 24 (k) All public records or information the disclosure of which is prohibited by  
25 federal law or regulation;
- 26 (l) Public records or information the disclosure of which is prohibited or  
27 restricted or otherwise made confidential by enactment of the General

1 Assembly;

- 2 (m) 1. Public records the disclosure of which would have a reasonable  
3 likelihood of threatening the public safety by exposing a vulnerability in  
4 preventing, protecting against, mitigating, or responding to a terrorist act  
5 and limited to:
- 6 a. Criticality lists resulting from consequence assessments;
  - 7 b. Vulnerability assessments;
  - 8 c. Antiterrorism protective measures and plans;
  - 9 d. Counterterrorism measures and plans;
  - 10 e. Security and response needs assessments;
  - 11 f. Infrastructure records that expose a vulnerability referred to in this  
12 subparagraph through the disclosure of the location, configuration,  
13 or security of critical systems, including public utility critical  
14 systems. These critical systems shall include but not be limited to  
15 information technology, communication, electrical, fire  
16 suppression, ventilation, water, wastewater, sewage, and gas  
17 systems;
  - 18 g. The following records when their disclosure will expose a  
19 vulnerability referred to in this subparagraph: detailed drawings,  
20 schematics, maps, or specifications of structural elements, floor  
21 plans, and operating, utility, or security systems of any building or  
22 facility owned, occupied, leased, or maintained by a public agency;  
23 and
  - 24 h. Records when their disclosure will expose a vulnerability referred  
25 to in this subparagraph and that describe the exact physical  
26 location of hazardous chemical, radiological, or biological  
27 materials.

- 1           2. As used in this paragraph, "terrorist act" means a criminal act intended  
2           to:
- 3           a. Intimidate or coerce a public agency or all or part of the civilian  
4           population;
- 5           b. Disrupt a system identified in subparagraph 1.f. of this paragraph;  
6           or
- 7           c. Cause massive destruction to a building or facility owned,  
8           occupied, leased, or maintained by a public agency.
- 9           3. On the same day that a public agency denies a request to inspect a public  
10          record for a reason identified in this paragraph, that public agency shall  
11          forward a copy of the written denial of the request, referred to in KRS  
12          61.880(1), to the executive director of the Kentucky Office of Homeland  
13          Security and the Attorney General.
- 14          4. Nothing in this paragraph shall affect the obligations of a public agency  
15          with respect to disclosure and availability of public records under state  
16          environmental, health, and safety programs.
- 17          5. The exemption established in this paragraph shall not apply when a  
18          member of the Kentucky General Assembly seeks to inspect a public  
19          record identified in this paragraph under the Open Records Law;
- 20          (n) Public or private records, including books, papers, maps, photographs, cards,  
21          tapes, discs, diskettes, recordings, software, or other documentation regardless  
22          of physical form or characteristics, having historic, literary, artistic, or  
23          commemorative value accepted by the archivist of a public university,  
24          museum, or government depository from a donor or depositor other than a  
25          public agency. This exemption shall apply to the extent that nondisclosure is  
26          requested in writing by the donor or depositor of such records, but shall not  
27          apply to records the disclosure or publication of which is mandated by another

- 1 statute or by federal law;
- 2 (o) Records of a procurement process under KRS Chapter 45A or 56. This  
3 exemption shall not apply after:
- 4 1. A contract is awarded; or
- 5 2. The procurement process is canceled without award of a contract and  
6 there is a determination that the contract will not be resolicited;~~and~~
- 7 (p) **Client and case files maintained by the Department of Public Advocacy or**  
8 **any person or entity contracting with the Department of Public Advocacy**  
9 **for the provision of legal representation under KRS Chapter 31;**
- 10 (q) **Attorney-client work product including preliminary recommendations,**  
11 **opinions, records, drafts, or findings by the attorney; and**
- 12 (r) Communications of a purely personal nature unrelated to any governmental  
13 function.
- 14 (2) No exemption in this section shall be construed to prohibit disclosure of statistical  
15 information not descriptive of any readily identifiable person.
- 16 (3) No exemption in this section shall be construed to deny, abridge, or impede the  
17 right of a public agency employee, including university employees, an applicant for  
18 employment, or an eligible on a register to inspect and to copy any record including  
19 preliminary and other supporting documentation that relates to him. The records  
20 shall include, but not be limited to, work plans, job performance, demotions,  
21 evaluations, promotions, compensation, classification, reallocation, transfers, lay-  
22 offs, disciplinary actions, examination scores, and preliminary and other supporting  
23 documentation. A public agency employee, including university employees,  
24 applicant, or eligible shall not have the right to inspect or to copy any examination  
25 or any documents relating to ongoing criminal or administrative investigations by  
26 an agency.
- 27 (4) If any public record contains material which is not excepted under this section, the



1 public agency shall separate the excepted and make the nonexcepted material  
2 available for examination.

3 (5) The provisions of this section shall in no way prohibit or limit the exchange of  
4 public records or the sharing of information between public agencies when the  
5 exchange is serving a legitimate governmental need or is necessary in the  
6 performance of a legitimate government function.

7 ➔Section 3. KRS 7.119 is amended to read as follows:

8 (1) Records in the custody of the Legislative Research Commission or the General  
9 Assembly shall be available for distribution to the public, or open for inspection by  
10 any person.

11 (2) As used in subsection (1) of this section, "records" includes bills and amendments  
12 introduced in the Senate or House of Representatives, Senate and House Journals,  
13 Acts of the General Assembly, roll call votes, final reports of committees, Kentucky  
14 Administrative Regulations, documents showing salary and expenses paid to  
15 members of the General Assembly and all employees of the legislative branch,  
16 contracts, receipts and work orders for repairs or renovations to legislative offices or  
17 facilities, items cataloged in the legislative library, the Legislative Record, and  
18 informational and educational materials offered by the public information office,  
19 including legislative videotapes and photographs, calendars, and meeting notices.

20 (3) Requests for records or other documents in the custody of the Legislative Research  
21 Commission or the General Assembly shall be directed to the director of the  
22 Legislative Research Commission. ~~[Except for KRS 61.880(3),]~~ The provisions of  
23 ~~[the Open Records Act,]~~ KRS 61.870 to 61.878~~[61.884,]~~ shall apply to a request for  
24 inspection or copies of documents or other items not set forth in subsection (2) of  
25 this section. ~~[, and except that]~~ A request for a review ~~[under KRS 61.880]~~ of any  
26 determination by the director shall be made to the Legislative Research  
27 Commission, which shall issue its decision within thirty (30) days. ***If the***

1        **Legislative Research Commission issues a decision within thirty (30) days of**  
2        **submission to it of the matter, that decision shall be final and unappealable.** If the  
3        Legislative Research Commission does not issue its decision on a review of the  
4        director's determination within thirty (30) days of submission to it of the matter, the  
5        director's determination may be appealed to the ~~Franklin~~ circuit court within sixty  
6        (60) days of its issuance.~~For purposes of this subsection, any reference to the~~  
7        ~~Attorney General in KRS 61.880 and 61.882 shall be read as the Legislative~~  
8        ~~Research Commission.~~

9        **(4) Nothing in this section shall be construed as a waiver or diminishment of any**  
10       **constitutional, common law, or statutory defenses, privileges, or immunities that**  
11       **may apply to any legislator, legislative staff, legislative agency or entity, or the**  
12       **legislative branch.**