AN ACT relating to public records for economic development.

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

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

(1) All public records shall be open for inspection by any resident of the Commonwealth, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No resident of the Commonwealth shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.

(2) Any resident of the Commonwealth shall have the right to inspect public records. The official custodian may require written application, signed by the applicant and with his name printed legibly on the application, describing the records to be inspected. The application shall be hand delivered, mailed, or sent via facsimile to the public agency.

(3) A resident of the Commonwealth may inspect the public records:

(a) During the regular office hours of the public agency; or

(b) By receiving copies of the public records from the public agency through the mail. The public agency shall mail copies of the public records to a person whose residence or principal place of business is outside the county in which the public records are located after he precisely describes the public records which are readily available within the public agency. If the resident of the Commonwealth requesting the public records requests that copies of the records be mailed, the official custodian shall mail the copies upon receipt of all fees and the cost of mailing.

(4) If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records.
If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed three (3) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection.

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

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

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

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

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

(b) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the
disclosure or publication of which is directed by another statute;

(c) 1. Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential, or a trade secret which if openly disclosed would permit an unfair commercial advantage to any person; 

2. Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential, or a trade secret, including but not limited to financial information, information regarding the identity or investment interest of shareholders, and present or future business plans, which are compiled and maintained:

   a. In conjunction with an application for or the administration of a loan or grant;

   b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;

   c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or

   d. For the grant or review of a license to do business or participate in an activity that is regulated by a public agency;

3. Information declared confidential by the Kentucky Economic Development Finance Authority pursuant to an administrative
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. 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
before the exam is given or if it is to be given again;

(h) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;

(i) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;

(j) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended which are not incorporated in the final findings, order, or record;

(k) All public records or information the disclosure of which is prohibited by federal law or regulation;

(l) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General
(m) 1. Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:

   a. Criticality lists resulting from consequence assessments;

   b. Vulnerability assessments;

   c. Antiterrorism protective measures and plans;

   d. Counterterrorism measures and plans;

   e. Security and response needs assessments;

   f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;

   g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency; and

   h. Records when their disclosure will expose a vulnerability referred to in this subparagraph and that describe the exact physical location of hazardous chemical, radiological, or biological materials.
2. As used in this paragraph, "terrorist act" means a criminal act intended to:
   a. Intimidate or coerce a public agency or all or part of the civilian population;
   b. Disrupt a system identified in subparagraph 1.f. of this paragraph; or
   c. Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.

3. On the same day that a public agency denies a request to inspect a public record for a reason identified in this paragraph, that public agency shall forward a copy of the written denial of the request, referred to in KRS 61.880(1), to the executive director of the Kentucky Office of Homeland Security and the Attorney General.

4. Nothing in this paragraph shall affect the obligations of a public agency with respect to disclosure and availability of public records under state environmental, health, and safety programs.

5. The exemption established in this paragraph shall not apply when a member of the Kentucky General Assembly seeks to inspect a public record identified in this paragraph under the Open Records Law;

   (n) Public or private records, including books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, having historic, literary, artistic, or commemorative value accepted by the archivist of a public university, museum, or government depository from a donor or depositor other than a public agency. This exemption shall apply to the extent that nondisclosure is requested in writing by the donor or depositor of such records, but shall not apply to records the disclosure or publication of which is mandated by another
statute or by federal law;

(o) Records of a procurement process under KRS Chapter 45A or 56. This exemption shall not apply after:

1. A contract is awarded; or

2. The procurement process is canceled without award of a contract and there is a determination that the contract will not be resolicited; and

(p) Client and case files maintained by the Department of Public Advocacy or any person or entity contracting with the Department of Public Advocacy for the provision of legal representation under KRS Chapter 31;

(q) Attorney-client work product including preliminary recommendations, opinions, records, drafts, or findings by the attorney; and

(r) Communications of a purely personal nature unrelated to any governmental function.

(2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.

(3) No exemption in this section shall be construed to deny, abridge, or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him. The records shall include, but not be limited to, work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, layoffs, disciplinary actions, examination scores, and preliminary and other supporting documentation. A public agency employee, including university employees, applicant, or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.

(4) If any public record contains material which is not excepted under this section, the
public agency shall separate the excepted and make the nonexcepted material available for examination.

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

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

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

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

(3) Requests for records or other documents in the custody of the Legislative Research Commission or the General Assembly shall be directed to the director of the Legislative Research Commission. The provisions of the Open Records Act, KRS 61.870 to 61.878, shall apply to a request for inspection or copies of documents or other items not set forth in subsection (2) of this section, and except that A request for a review of any determination by the director shall be made to the Legislative Research Commission, which shall issue its decision within thirty (30) days.
Legislative Research Commission issues a decision within thirty (30) days of submission to it of the matter, that decision shall be final and unappealable. If the Legislative Research Commission does not issue its decision on a review of the director's determination within thirty (30) days of submission to it of the matter, the director's determination may be appealed to the [Franklin] circuit court within sixty (60) days of its issuance. [For purposes of this subsection, any reference to the Attorney General in KRS 61.880 and 61.882 shall be read as the Legislative Research Commission.]

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