

1 AN ACT relating to public records and declaring an emergency.

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

3 ➔Section 1. KRS 61.878 is amended to read as follows:

4 (1) The following public records are excluded from the application of KRS 61.870 to
5 61.884 and shall be subject to inspection only upon order of a court of competent
6 jurisdiction, except that no court shall authorize the inspection by any party of any
7 materials pertaining to civil litigation beyond that which is provided by the Rules of
8 Civil Procedure governing pretrial discovery:

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

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

15 (c) 1. Upon and after July 15, 1992, records confidentially disclosed to an
16 agency or required by an agency to be disclosed to it, generally
17 recognized as confidential or proprietary, which if openly disclosed
18 would permit an unfair commercial advantage to competitors of the
19 entity that disclosed the records;

20 2. Upon and after July 15, 1992, records confidentially disclosed to an
21 agency or required by an agency to be disclosed to it, generally
22 recognized as confidential or proprietary, which are compiled and
23 maintained:

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

26 b. In conjunction with an application for or the administration of
27 assessments, incentives, inducements, and tax credits as described

- 1 in KRS Chapter 154;
- 2 c. In conjunction with the regulation of commercial enterprise,
3 including mineral exploration records, unpatented, secret
4 commercially valuable plans, appliances, formulae, or processes,
5 which are used for the making, preparing, compounding, treating,
6 or processing of articles or materials which are trade commodities
7 obtained from a person; or
- 8 d. For the grant or review of a license to do business.
- 9 3. The exemptions provided for in subparagraphs 1. and 2. of this
10 paragraph shall not apply to records the disclosure or publication of
11 which is directed by another statute;
- 12 (d) Public records pertaining to a prospective location of a business or industry
13 where no previous public disclosure has been made of the business' or
14 industry's interest in locating in, relocating within or expanding within the
15 Commonwealth. This exemption shall not include those records pertaining to
16 application to agencies for permits or licenses necessary to do business or to
17 expand business operations within the state, except as provided in paragraph
18 (c) of this subsection;
- 19 (e) Public records which are developed by an agency in conjunction with the
20 regulation or supervision of financial institutions, including but not limited to,
21 banks, savings and loan associations, and credit unions, which disclose the
22 agency's internal examining or audit criteria and related analytical methods;
- 23 (f) The contents of real estate appraisals, engineering or feasibility estimates and
24 evaluations made by or for a public agency relative to acquisition of property,
25 until such time as all of the property has been acquired. The law of eminent
26 domain shall not be affected by this provision;
- 27 (g) Test questions, scoring keys, and other examination data used to administer a

- 1 licensing examination, examination for employment, or academic examination
2 before the exam is given or if it is to be given again;
- 3 (h) Records of law enforcement agencies or agencies involved in administrative
4 adjudication that were compiled in the process of detecting and investigating
5 statutory or regulatory violations if the disclosure of the information would
6 harm the agency by revealing the identity of informants not otherwise known
7 or by premature release of information to be used in a prospective law
8 enforcement action or administrative adjudication. Unless exempted by other
9 provisions of KRS 61.870 to 61.884, public records exempted under this
10 provision shall be open after enforcement action is completed or a decision is
11 made to take no action; however, records or information compiled and
12 maintained by county attorneys or Commonwealth's attorneys pertaining to
13 criminal investigations or criminal litigation shall be exempted from the
14 provisions of KRS 61.870 to 61.884 and shall remain exempted after
15 enforcement action, including litigation, is completed or a decision is made to
16 take no action. The exemptions provided by this subsection shall not be used
17 by the custodian of the records to delay or impede the exercise of rights
18 granted by KRS 61.870 to 61.884;
- 19 (i) Preliminary drafts, notes, correspondence with private individuals, other than
20 correspondence which is intended to give notice of final action of a public
21 agency;
- 22 (j) Preliminary recommendations, and preliminary memoranda in which opinions
23 are expressed or policies formulated or recommended;
- 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, including any information acquired by the Department of Revenue
2 in tax administration that is prohibited from divulgence or disclosure under
3 KRS 131.190;

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

1 location of hazardous chemical, radiological, or biological
2 materials.

3 2. As used in this paragraph, "terrorist act" means a criminal act intended
4 to:

5 a. Intimidate or coerce a public agency or all or part of the civilian
6 population;

7 b. Disrupt a system identified in subparagraph 1.f. of this paragraph;
8 or

9 c. Cause massive destruction to a building or facility owned,
10 occupied, leased, or maintained by a public agency.

11 3. On the same day that a public agency denies a request to inspect a public
12 record for a reason identified in this paragraph, that public agency shall
13 forward a copy of the written denial of the request, referred to in KRS
14 61.880(1), to the executive director of the Kentucky Office of Homeland
15 Security and the Attorney General.

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

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

22 (n) Public or private records, including books, papers, maps, photographs, cards,
23 tapes, discs, diskettes, recordings, software, or other documentation regardless
24 of physical form or characteristics, having historic, literary, artistic, or
25 commemorative value accepted by the archivist of a public university,
26 museum, or government depository from a donor or depositor other than a
27 public agency. This exemption shall apply to the extent that nondisclosure is

1 requested in writing by the donor or depositor of such records, but shall not
2 apply to records the disclosure or publication of which is mandated by another
3 statute or by federal law;

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

- 6 1. A contract is awarded; or
- 7 2. The procurement process is canceled without award of a contract and
8 there is a determination that the contract will not be resolicited;~~and~~

9 (p) Communications of a purely personal nature unrelated to any governmental
10 function; and

11 (q) Except as provided in KRS 61.168, photographs or videos that depict the
12 death, killing, rape, or physical or sexual assault or abuse of a person.
13 However, such photographs or videos shall be made available at the request
14 of any party who was involved in the underlying incident, including the
15 party, his or her immediate family, legal representative, or any involved
16 insurance company or their representative.

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

19 (3) No exemption in this section shall be construed to deny, abridge, or impede the
20 right of a public agency employee, including university employees, an applicant for
21 employment, or an eligible on a register to inspect and to copy any record including
22 preliminary and other supporting documentation that relates to him. The records
23 shall include, but not be limited to, work plans, job performance, demotions,
24 evaluations, promotions, compensation, classification, reallocation, transfers, lay-
25 offs, disciplinary actions, examination scores, and preliminary and other supporting
26 documentation. A public agency employee, including university employees,
27 applicant, or eligible shall not have the right to inspect or to copy any examination

1 or any documents relating to ongoing criminal or administrative investigations by
2 an agency.

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

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

10 ➔Section 2. KRS 61.872 is amended to read as follows:

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

16 (2) Any person shall have the right to inspect public records. The official custodian may
17 require [:

18 ~~(a) —~~ a written application, signed by the applicant and with his name printed legibly on
19 the application, describing the records to be inspected. The written application shall
20 be hand delivered, mailed, e-mailed, or sent via facsimile to the public agency[;

21 ~~(b) — Facsimile transmission of the written application described in paragraph (a) of this~~
22 ~~subsection; or~~

23 ~~(c) — E-mail of the application described in paragraph (a) of this subsection].~~

24 (3) A person may inspect the public records:

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

26 (b) By receiving copies of the public records from the public agency through the
27 mail. The public agency shall mail copies of the public records to a person

1 whose residence or principal place of business is outside the county in which
2 the public records are located after he precisely describes the public records
3 which are readily available within the public agency. If the person requesting
4 the public records requests that copies of the records be mailed, the official
5 custodian shall mail the copies upon receipt of all fees and the cost of mailing.

6 (4) If the person to whom the application is directed does not have custody or control of
7 the public record requested, that person shall notify the applicant and shall furnish
8 the name and location of the official custodian of the agency's public records.

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

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

20 ➔Section 3. This Act may be cited as the Bailey Holt-Preston Cope Victims
21 Privacy Act.

22 ➔Section 4. Whereas victims and victims' families are subjected to emotional
23 distress, embarrassment, and invasion of privacy when videos or photographs depicting
24 violence against them are played in public forums, an emergency is declared to exist, and
25 this Act takes effect upon its passage and approval by the Governor or upon its otherwise
26 becoming a law.