

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) Photographs or videos prepared, owned, used, possessed, or retained by  
 12 public agencies that depict a person's death, killing, rape, or physical or  
 13 sexual assault or abuse, as well as any other gruesome photograph or video  
 14 of a person. This exemption shall:

- 15 1. Apply to gruesome photographs or videos introduced as part of a civil  
 16 or criminal proceeding; and
- 17 2. Have retroactive application to gruesome photographs or videos in  
 18 existence prior to the effective date of this Act.

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

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

1 documentation. A public agency employee, including university employees,  
2 applicant, or eligible shall not have the right to inspect or to copy any examination  
3 or any documents relating to ongoing criminal or administrative investigations by  
4 an agency.

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

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

12 ➔Section 2. This Act may be cited as The Bailey Holt-Preston Cope Victims  
13 Privacy Act.

14 ➔Section 3. Whereas victims and victims' families are subjected to emotional  
15 distress, embarrassment, and invasion of privacy when videos or photographs depicting  
16 violence against them are played in public forums, an emergency is declared to exist, and  
17 this Act takes effect upon its passage and approval by the Governor or upon its otherwise  
18 becoming a law.