

1 AN ACT relating to open records.

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 person, except as otherwise
5 provided by KRS 61.870 to 61.884, and suitable facilities shall be made available
6 by each public agency for the exercise of this right. No person shall remove original
7 copies of public records from the offices of any public agency without the written
8 permission of the official custodian of the record.

9 (2) Any person shall have the right to inspect public records. The official custodian may
10 require ~~;~~

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

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

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

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

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

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

27 (4) If the person to whom the application is directed does not have custody or control of

1 the public record requested, that person shall notify the applicant and shall furnish
2 the name and location of the official custodian of the agency's public records.

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

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

14 ➔Section 2. KRS 61.876 is amended to read as follows:

15 (1) Each public agency shall adopt rules and regulations in conformity with the
16 provisions of KRS 61.870 to 61.884 to provide full access to public records, to
17 protect public records from damage and disorganization, to prevent excessive
18 disruption of its essential functions, to provide assistance and information upon
19 request and to insure efficient and timely action in response to application for
20 inspection, and such rules and regulations shall include, but shall not be limited to:

- 21 (a) The principal office of the public agency and its regular office hours;
- 22 (b) The title, mailing ~~and~~ address, and e-mail address of the official custodian
23 of the public agency's records;
- 24 (c) The fees, to the extent authorized by KRS 61.874 or other statute, charged for
25 copies;
- 26 (d) The procedures to be followed in requesting public records.

27 (2) Each public agency shall display a copy of its rules and regulations pertaining to

1 public records in a prominent location accessible to the public.

2 (3) The Finance and Administration Cabinet may promulgate uniform rules and
3 regulations for all state administrative agencies.

4 ➔Section 3. KRS 61.880 is amended to read as follows:

5 (1) If a person enforces KRS 61.870 to 61.884 pursuant to this section, he shall begin
6 enforcement under this subsection before proceeding to enforcement under
7 subsection (2) of this section. Each public agency, upon any request for records
8 made under KRS 61.870 to 61.884, shall determine within three (3) days, excepting
9 Saturdays, Sundays, and legal holidays, after the receipt of any such request whether
10 to comply with the request and shall notify in writing the person making the request,
11 within the three (3) day period, of its decision. An agency response denying, in
12 whole or in part, inspection of any record shall include a statement of the specific
13 exception authorizing the withholding of the record and a brief explanation of how
14 the exception applies to the record withheld. The response shall be issued by the
15 official custodian or under his authority, and it shall constitute final agency action.

16 (2) (a) If a complaining party wishes the Attorney General to review a public
17 agency's denial of a request to inspect a public record, the complaining party
18 shall forward to the Attorney General a copy of the written request and a copy
19 of the written response denying inspection. If the public agency refuses to
20 provide a written response, a complaining party shall provide a copy of the
21 written request. The Attorney General shall review the request and denial and
22 issue within twenty (20) days, excepting Saturdays, Sundays and legal
23 holidays, a written decision stating whether the agency violated provisions of
24 KRS 61.870 to 61.884.

25 (b) In unusual circumstances, the Attorney General may extend the twenty (20)
26 day time limit by sending written notice to the complaining party and a copy
27 to the denying agency, setting forth the reasons for the extension, and the day

1 on which a decision is expected to be issued, which shall not exceed an
2 additional thirty (30) work days, excepting Saturdays, Sundays, and legal
3 holidays. As used in this section, "unusual circumstances" means, but only to
4 the extent reasonably necessary to the proper resolution of an appeal:

- 5 1. The need to obtain additional documentation from the agency or a copy
6 of the records involved;
- 7 2. The need to conduct extensive research on issues of first impression; or
- 8 3. An unmanageable increase in the number of appeals received by the
9 Attorney General.

10 (c) On the day that the Attorney General renders his decision, he shall mail a copy
11 to the agency and a copy to the person who requested the record in question.
12 The burden of proof in sustaining the action shall rest with the agency, and the
13 Attorney General may request additional documentation from the agency for
14 substantiation. The Attorney General may also request a copy of the records
15 involved but they shall not be disclosed.

16 (3) Each agency shall notify the Attorney General of any actions filed against that
17 agency in Circuit Court regarding the enforcement of KRS 61.870 to 61.884. The
18 Attorney General shall not, however, be named as a party in any Circuit Court
19 actions regarding the enforcement of KRS 61.870 to 61.884, nor shall he have any
20 duty to defend his decision in Circuit Court or any subsequent proceedings.

21 (4) If a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency
22 short of denial of inspection, including but not limited to the imposition of
23 excessive fees, delay past the three (3) day period described in subsection (1) of
24 this section, excessive extensions of time, or the misdirection of the applicant, the
25 person may complain in writing to the Attorney General, and the complaint shall be
26 subject to the same adjudicatory process as if the record had been denied.

27 (5) (a) A party shall have thirty (30) days from the day that the Attorney General

1 renders his decision to appeal the decision. An appeal within the thirty (30)
2 day time limit shall be treated as if it were an action brought under KRS
3 61.882.

4 (b) If an appeal is not filed within the thirty (30) day time limit, the Attorney
5 General's decision shall have the force and effect of law and shall be
6 enforceable in the Circuit Court of the county where the public agency has its
7 principal place of business or the Circuit Court of the county where the public
8 record is maintained.

9 ➔Section 4. KRS 189.635 is amended to read as follows:

10 (1) The Justice and Public Safety Cabinet, Department of Kentucky State Police, shall
11 be responsible for maintaining a reporting system for all vehicle accidents which
12 occur within the Commonwealth. Such accident reports shall be utilized for such
13 purposes as will improve the traffic safety program in the Commonwealth involving
14 the collection, processing, storing, and dissemination of such data and the
15 establishment of procedures by administrative regulations to ensure that uniform
16 definitions, classifications, and other federal requirements are in compliance.

17 (2) Any person operating a vehicle on the highways of this state who is involved in an
18 accident resulting in fatal or nonfatal personal injury to any person or damage to the
19 vehicle rendering the vehicle inoperable shall be required to immediately notify a
20 law enforcement officer having jurisdiction. In the event the operator fails to notify
21 or is incapable of notifying a law enforcement officer having jurisdiction, such
22 responsibility shall rest with the owner of the vehicle or any occupant of the vehicle
23 at the time of the accident. A law enforcement officer having jurisdiction shall
24 investigate the accident and file a written report of the accident with his or her law
25 enforcement agency.

26 (3) Every law enforcement agency whose officers investigate a vehicle accident of
27 which a report must be made as required in this chapter shall file a report of the

1 accident with the Department of Kentucky State Police within ten (10) days after
2 investigation of the accident upon forms supplied by the department.

3 (4) Any person operating a vehicle on the highways of this state who is involved in an
4 accident resulting in any property damage exceeding five hundred dollars (\$500) in
5 which an investigation is not conducted by a law enforcement officer shall file a
6 written report of the accident with the Department of Kentucky State Police within
7 ten (10) days of occurrence of the accident upon forms provided by the department.

8 (5) (a) All accident reports filed with the Department of Kentucky State Police in
9 compliance with subsection (4) of this section shall not be considered open
10 records under KRS 61.870 to 61.884 and shall remain confidential, except that
11 the department may:

12 1. Disclose the identity of a person involved in an accident when his or her
13 identity is not otherwise known or when he or she denies his or her
14 presence at an accident; and

15 2. Make the reports available:

16 a. To the persons named in paragraph (c) of this subsection; and

17 b. In accordance with subsection (8) of this section.

18 (b) All other accident reports required by this section, and the information
19 contained in the reports, shall be confidential and exempt from public
20 disclosure under KRS 61.870 to 61.884, except when:

21 1. Produced pursuant to a properly executed subpoena or court order; or

22 2. Disclosed as provided in this section.

23 (c) Accident reports shall be made available to:

24 1. The parties to the accident;

25 2. The parents or guardians of a minor who is party to the accident;

26 3. Insurers or their written designee for insurance business purposes of any
27 party who is the subject of the report;

- 1 4. The attorneys of the parties to the accident *or the attorney's written*
2 *designee*;
- 3 5. Any party to litigation who files with the department a request for the
4 report and includes a copy of the first page of a District or Circuit Court
5 clerk-stamped complaint naming all parties; and
- 6 6. The Department of Workplace Standards in the Labor Cabinet if the
7 accident report is pertinent to an occupational safety and health
8 investigation.
- 9 (6) (a) Except as provided for in paragraph (b) of this subsection, the department
10 shall not release accident reports for a commercial purpose.
- 11 (b) Notwithstanding any other provision of this section, the department may, as a
12 matter of public safety, contract with an outside entity and release unredacted
13 vehicle damage data extracted from accident reports to the entity if the data is
14 used solely for the purpose of providing the public a means of determining a
15 vehicle's accident history. The department may further contract with a third
16 party to provide electronic access to reports for persons and entities who are
17 entitled to the reports under subsection (5) of this section.
- 18 (7) The department shall promulgate administrative regulations in accordance with
19 KRS Chapter 13A to set out a fee schedule for accident reports made available
20 pursuant to subsections (5) and (8) of this section. These fees shall be in addition to
21 those charged to the public for records produced under KRS Chapter 61.
- 22 (8) (a) The report shall be made available to a news-gathering organization, solely for
23 the purpose of publishing or broadcasting the news. The news-gathering
24 organization shall not use or distribute the report, or knowingly allow its use
25 or distribution, for a commercial purpose other than the news-gathering
26 organization's publication or broadcasting of the information in the report.
- 27 (b) For the purposes of this subsection:

- 1 1. "News-gathering organization" includes:
- 2 a. A newspaper or periodical if it:
- 3 i. Is published at least fifty (50) of fifty-two (52) weeks during
- 4 a calendar year;
- 5 ii. Contains at least twenty-five percent (25%) news content in
- 6 each issue or no more than seventy-five percent (75%)
- 7 advertising content in any issue in the calendar year; and
- 8 iii. Contains news of general interest to its readers that can
- 9 include news stories, editorials, sports, weddings, births, and
- 10 death notices;
- 11 b. A television or radio station with a valid broadcast license issued
- 12 by the Federal Communications Commission;
- 13 c. A news organization that broadcasts over a multichannel video
- 14 programming service as defined in KRS 136.602;
- 15 d. A Web site published by or affiliated with any entity described in
- 16 subdivision a., b., or c. of this subparagraph;
- 17 e. An online-only newspaper or magazine that publishes news or
- 18 opinion of interest to a general audience and is not affiliated with
- 19 any entity described in subparagraph 2. of this paragraph; and
- 20 f. Any other entity that publishes news content by any means to the
- 21 general public or to members of a particular profession or
- 22 occupational group; and
- 23 2. "News-gathering organization" does not include any product or
- 24 publication with the primary purpose of distributing advertising or of
- 25 publishing names and other personal identifying information concerning
- 26 parties to motor vehicle accidents which may be used to solicit for
- 27 services covered under Subtitle 39 of KRS Chapter 304.

- 1 (c) A news-gathering organization shall not be held to have used or knowingly
2 allowed the use of the report for a commercial purpose merely because of its
3 publication or broadcast.
- 4 (d) A request under this subsection shall be completed using a form promulgated
5 by the department through administrative regulations in accordance with KRS
6 Chapter 13A. The form under this paragraph shall include:
- 7 1. The name and address of the requestor and the news-gathering
8 organization the requestor represents;
 - 9 2. A statement that the requestor is a news-gathering organization under
10 this subsection and identifying the specific subdivision of paragraph
11 (b)1. of this subsection under which the requester qualifies;
 - 12 3. A statement that the request is in compliance with the criteria contained
13 in this section; and
 - 14 4. A declaration of the requestor as to the accuracy and truthfulness of the
15 information provided in the request.
- 16 (e) 1. The department shall redact all personal information from a report prior
17 to making it available to a news-gathering organization as defined under
18 paragraph (b)1.f. of this subsection.
- 19 2. Reports may be provided to news-gathering organizations as defined
20 under paragraph (b)1.a. to e. of this subsection without redaction.
 - 21 3. For the purposes of this paragraph, "personal information" means:
 - 22 a. The address, driver's license number, phone number, date of birth,
23 and any other contact information contained in the report for each
24 person listed on the report; and
 - 25 b. The vehicle identification numbers (VINs) for each vehicle listed
26 on the report.
- 27 (9) The motor vehicle insurers of any train engineer or other train crew member

- 1 involved in an accident on a railroad while functioning in their professional capacity
2 shall be prohibited from obtaining a copy of any accident report filed on the
3 accident under this section without written consent from the individual the company
4 insures. Insurance companies issuing motor vehicle policies in the Commonwealth
5 shall be prohibited from raising a policyholder's rates solely because the
6 policyholder, in his or her professional capacity, is a train engineer or other train
7 crew member involved in an accident on a railroad.
- 8 (10) For reporting and statistical purposes, motor scooters and autocycles as defined in
9 KRS 186.010 shall be listed as a distinct category and shall not be considered to be
10 a motor vehicle or a motorcycle for reports issued under this section.