

# Vetoed in its Entirety

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21 RS SB 48/EN

1 AN ACT relating to personal information.

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

3 ➔Section 1. KRS 61.870 is amended to read as follows:

4 As used in KRS 61.870 to 61.884, unless the context requires otherwise:

- 5 (1) "Public agency" means:
- 6 (a) Every state or local government officer;
  - 7 (b) Every state or local government department, division, bureau, board,  
8 commission, and authority;
  - 9 (c) Every state or local legislative board, commission, committee, and officer;
  - 10 (d) Every county and city governing body, council, school district board, special  
11 district board, and municipal corporation;
  - 12 (e) Every state or local court or judicial agency;
  - 13 (f) Every state or local government agency, including the policy-making board of  
14 an institution of education, created by or pursuant to state or local statute,  
15 executive order, ordinance, resolution, or other legislative act;
  - 16 (g) Any body created by state or local authority in any branch of government;
  - 17 (h) Any body which, within any fiscal year, derives at least twenty-five percent  
18 (25%) of its funds expended by it in the Commonwealth of Kentucky from  
19 state or local authority funds. However, any funds derived from a state or local  
20 authority in compensation for goods or services that are provided by a contract  
21 obtained through a public competitive procurement process shall not be  
22 included in the determination of whether a body is a public agency under this  
23 subsection;
  - 24 (i) Any entity where the majority of its governing body is appointed by a public  
25 agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of  
26 this subsection; by a member or employee of such a public agency; or by any  
27 combination thereof;

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- 1 (j) Any board, commission, committee, subcommittee, ad hoc committee,  
2 advisory committee, council, or agency, except for a committee of a hospital  
3 medical staff, established, created, and controlled by a public agency as  
4 defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this  
5 subsection; and
- 6 (k) Any interagency body of two (2) or more public agencies where each public  
7 agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of  
8 this subsection;
- 9 (2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs,  
10 diskettes, recordings, software, or other documentation regardless of physical form  
11 or characteristics, which are prepared, owned, used, in the possession of or retained  
12 by a public agency. "Public record" shall not include any records owned or  
13 maintained by or for a body referred to in subsection (1)(h) of this section that are  
14 not related to functions, activities, programs, or operations funded by state or local  
15 authority;
- 16 (3) (a) "Software" means the program code which makes a computer system  
17 function, but does not include that portion of the program code which contains  
18 public records exempted from inspection as provided by KRS 61.878 or  
19 specific addresses of files, passwords, access codes, user identifications, or  
20 any other mechanism for controlling the security or restricting access to public  
21 records in the public agency's computer system.
- 22 (b) "Software" consists of the operating system, application programs,  
23 procedures, routines, and subroutines such as translators and utility programs,  
24 but does not include that material which is prohibited from disclosure or  
25 copying by a license agreement between a public agency and an outside entity  
26 which supplied the material to the agency;
- 27 (4) (a) "Commercial purpose" means the direct or indirect use of any part of a public

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1 record or records, in any form, for sale, resale, solicitation, rent, or lease of a  
2 service, or any use by which the user expects a profit either through  
3 commission, salary, or fee.

4 (b) "Commercial purpose" shall not include:

5 1. Publication or related use of a public record by a newspaper or  
6 periodical;

7 2. Use of a public record by a radio or television station in its news or other  
8 informational programs; or

9 3. Use of a public record in the preparation for prosecution or defense of  
10 litigation, or claims settlement by the parties to such action, or the  
11 attorneys representing the parties;

12 (5) "Official custodian" means the chief administrative officer or any other officer or  
13 employee of a public agency who is responsible for the maintenance, care and  
14 keeping of public records, regardless of whether such records are in his actual  
15 personal custody and control;

16 (6) "Custodian" means the official custodian or any authorized person having personal  
17 custody and control of public records;

18 (7) "Media" means the physical material in or on which records may be stored or  
19 represented, and which may include, but is not limited to paper, microform, disks,  
20 diskettes, optical disks, magnetic tapes, and cards;

21 (8) "Mechanical processing" means any operation or other procedure which is  
22 transacted on a machine, and which may include, but is not limited to a copier,  
23 computer, recorder or tape processor, or other automated device;~~and~~

24 (9) "Booking photograph and photographic record of inmate" means a photograph or  
25 image of an individual generated by law enforcement for identification purposes  
26 when the individual is booked into a detention facility as defined in KRS 520.010 or  
27 photograph and image of an inmate taken pursuant to KRS 196.099; and~~;~~

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1 (10) "Public officer" means:

2 (a) Sworn public peace officers;

3 (b) Public safety officers;

4 (c) Any individual who is an employee or retired employee of a public agency  
5 and who is certified as a first responder under KRS 61.900, 61.902 to  
6 61.930, or KRS Chapter 311A, or whose employment duties include law  
7 enforcement, emergency medical services, or firefighting activities;

8 (d) Active and retired judges or justices of the Supreme Court, Court of  
9 Appeals, Circuit Court, District Court, Family Court, or Kentucky Labor  
10 Cabinet;

11 (e) Employees of the Cabinet for Health and Family Services whose duties  
12 include the investigation of abuse, neglect, exploitation, fraud, theft, or  
13 other criminal activities;

14 (f) Employees of law enforcement agencies who testify in criminal cases,  
15 including investigative analysts and lab technicians;

16 (g) Active and retired United States, Commonwealth's, and county attorneys,  
17 their assistants, statewide prosecutors, and guardians ad litem;

18 (h) Active and retired corrections officers, jailers, corrections probation and  
19 parole officers, juvenile probation officers, and juvenile detention officers;  
20 and

21 (i) Persons employed at emergency call centers in the state of Kentucky.

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

- 23 (1) The following public records are excluded from the application of KRS 61.870 to  
24 61.884 and shall be subject to inspection only upon order of a court of competent  
25 jurisdiction, except that no court shall authorize the inspection by any party of any  
26 materials pertaining to civil litigation beyond that which is provided by the Rules of  
27 Civil Procedure governing pretrial discovery:

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- 1 (a) Public records containing information of a personal nature where the public  
2 disclosure thereof would constitute a clearly unwarranted invasion of personal  
3 privacy;
- 4 (b) Records confidentially disclosed to an agency and compiled and maintained  
5 for scientific research. This exemption shall not, however, apply to records the  
6 disclosure or publication of which is directed by another statute;
- 7 (c) 1. 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, which if openly disclosed  
10 would permit an unfair commercial advantage to competitors of the  
11 entity that disclosed the records;
- 12 2. Upon and after July 15, 1992, records confidentially disclosed to an  
13 agency or required by an agency to be disclosed to it, generally  
14 recognized as confidential or proprietary, which are compiled and  
15 maintained:
- 16 a. In conjunction with an application for or the administration of a  
17 loan or grant;
- 18 b. In conjunction with an application for or the administration of  
19 assessments, incentives, inducements, and tax credits as described  
20 in KRS Chapter 154;
- 21 c. In conjunction with the regulation of commercial enterprise,  
22 including mineral exploration records, unpatented, secret  
23 commercially valuable plans, appliances, formulae, or processes,  
24 which are used for the making, preparing, compounding, treating,  
25 or processing of articles or materials which are trade commodities  
26 obtained from a person; or
- 27 d. For the grant or review of a license to do business.

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- 1           3. The exemptions provided for in subparagraphs 1. and 2. of this  
2           paragraph shall not apply to records the disclosure or publication of  
3           which is directed by another statute;
- 4           (d) Public records pertaining to a prospective location of a business or industry  
5           where no previous public disclosure has been made of the business' or  
6           industry's interest in locating in, relocating within or expanding within the  
7           Commonwealth. This exemption shall not include those records pertaining to  
8           application to agencies for permits or licenses necessary to do business or to  
9           expand business operations within the state, except as provided in paragraph  
10          (c) of this subsection;
- 11          (e) Public records which are developed by an agency in conjunction with the  
12          regulation or supervision of financial institutions, including but not limited to,  
13          banks, savings and loan associations, and credit unions, which disclose the  
14          agency's internal examining or audit criteria and related analytical methods;
- 15          (f) The contents of real estate appraisals, engineering or feasibility estimates and  
16          evaluations made by or for a public agency relative to acquisition of property,  
17          until such time as all of the property has been acquired. The law of eminent  
18          domain shall not be affected by this provision;
- 19          (g) Test questions, scoring keys, and other examination data used to administer a  
20          licensing examination, examination for employment, or academic examination  
21          before the exam is given or if it is to be given again;
- 22          (h) Records of law enforcement agencies or agencies involved in administrative  
23          adjudication that were compiled in the process of detecting and investigating  
24          statutory or regulatory violations if the disclosure of the information would  
25          harm the agency by revealing the identity of informants not otherwise known  
26          or by premature release of information to be used in a prospective law  
27          enforcement action or administrative adjudication. Unless exempted by other

1 provisions of KRS 61.870 to 61.884, public records exempted under this  
2 provision shall be open after enforcement action is completed or a decision is  
3 made to take no action; however, records or information compiled and  
4 maintained by county attorneys or Commonwealth's attorneys pertaining to  
5 criminal investigations or criminal litigation shall be exempted from the  
6 provisions of KRS 61.870 to 61.884 and shall remain exempted after  
7 enforcement action, including litigation, is completed or a decision is made to  
8 take no action. The exemptions provided by this subsection shall not be used  
9 by the custodian of the records to delay or impede the exercise of rights  
10 granted by KRS 61.870 to 61.884;

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

14 (j) Preliminary recommendations, and preliminary memoranda in which opinions  
15 are expressed or policies formulated or recommended;

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

18 (l) Public records or information the disclosure of which is prohibited or  
19 restricted or otherwise made confidential by enactment of the General  
20 Assembly, including any information acquired by the Department of Revenue  
21 in tax administration that is prohibited from divulgence or disclosure under  
22 KRS 131.190;

23 (m) 1. Public records the disclosure of which would have a reasonable  
24 likelihood of threatening the public safety by exposing a vulnerability in  
25 preventing, protecting against, mitigating, or responding to a terrorist act  
26 and limited to:

27 a. Criticality lists resulting from consequence assessments;

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- 1                   b.    Vulnerability assessments;
- 2                   c.    Antiterrorism protective measures and plans;
- 3                   d.    Counterterrorism measures and plans;
- 4                   e.    Security and response needs assessments;
- 5                   f.    Infrastructure records that expose a vulnerability referred to in this
- 6                         subparagraph through the disclosure of the location, configuration,
- 7                         or security of critical systems, including public utility critical
- 8                         systems. These critical systems shall include but not be limited to
- 9                         information technology, communication, electrical, fire
- 10                        suppression, ventilation, water, wastewater, sewage, and gas
- 11                        systems;
- 12                   g.    The following records when their disclosure will expose a
- 13                         vulnerability referred to in this subparagraph: detailed drawings,
- 14                         schematics, maps, or specifications of structural elements, floor
- 15                         plans, and operating, utility, or security systems of any building or
- 16                         facility owned, occupied, leased, or maintained by a public agency;
- 17                         and
- 18                   h.    Records when their disclosure will expose a vulnerability referred
- 19                         to in this subparagraph and that describe the exact physical
- 20                         location of hazardous chemical, radiological, or biological
- 21                         materials.
- 22                   2.    As used in this paragraph, "terrorist act" means a criminal act intended
- 23                         to:
- 24                         a.    Intimidate or coerce a public agency or all or part of the civilian
- 25                         population;
- 26                         b.    Disrupt a system identified in subparagraph 1.f. of this paragraph;
- 27                         or



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- 1                   c. Cause massive destruction to a building or facility owned,  
2                   occupied, leased, or maintained by a public agency.
- 3                   3. On the same day that a public agency denies a request to inspect a public  
4                   record for a reason identified in this paragraph, that public agency shall  
5                   forward a copy of the written denial of the request, referred to in KRS  
6                   61.880(1), to the executive director of the Kentucky Office of Homeland  
7                   Security and the Attorney General.
- 8                   4. Nothing in this paragraph shall affect the obligations of a public agency  
9                   with respect to disclosure and availability of public records under state  
10                  environmental, health, and safety programs.
- 11                  5. The exemption established in this paragraph shall not apply when a  
12                  member of the Kentucky General Assembly seeks to inspect a public  
13                  record identified in this paragraph under the Open Records Law;
- 14                  (n) Public or private records, including books, papers, maps, photographs, cards,  
15                  tapes, discs, diskettes, recordings, software, or other documentation regardless  
16                  of physical form or characteristics, having historic, literary, artistic, or  
17                  commemorative value accepted by the archivist of a public university,  
18                  museum, or government depository from a donor or depositor other than a  
19                  public agency. This exemption shall apply to the extent that nondisclosure is  
20                  requested in writing by the donor or depositor of such records, but shall not  
21                  apply to records the disclosure or publication of which is mandated by another  
22                  statute or by federal law;
- 23                  (o) Records of a procurement process under KRS Chapter 45A or 56. This  
24                  exemption shall not apply after:
- 25                    1. A contract is awarded; or  
26                    2. The procurement process is canceled without award of a contract and  
27                    there is a determination that the contract will not be resolicited;~~and~~

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

3 (q) Personally identifiable information in records that would reveal the address  
4 or location of a public officer if that officer has notified the public agency  
5 responsible for those records that he or she does not want the information  
6 to be made public. Notification by the public officer shall be valid for three  
7 (3) years, may be renewed, and shall include:

8 1. A written request that the information be excluded from disclosure;  
9 and

10 2. A letter from the employer of the public officer verifying present or  
11 past employment in a public officer position.

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

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

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

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

5 ➔SECTION 3. A NEW SECTION OF KRS 61.870 TO 61.884 IS CREATED TO  
6 READ AS FOLLOWS:

7 (1) As used in this section:

8 (a) "Immediate family member" means:

- 9 1. A spouse, child, parent, or person under the familial custody or care  
10 of a judicial officer, prosecutor, or law enforcement agent;
- 11 2. A person related by blood, law, or marriage to the judicial officer,  
12 prosecutor, or law enforcement agent; or
- 13 3. A person who lives in the same residence as the judicial officer,  
14 prosecutor, or law enforcement agent;

15 (b) "Judicial officer" means any current, former, or retired:

- 16 1. Administrative law judge or member of the Workers' Compensation  
17 Board pursuant to KRS Chapter 342;
- 18 2. Federal justice, judge, or magistrate judge as defined in the  
19 Constitution of the United States or the United States Code;
- 20 3. Hearing officer, qualified to conduct administrative hearings pursuant  
21 to KRS Chapter 13B;
- 22 4. Justice, judge, trial commissioner, or domestic relations commissioner  
23 of the Kentucky Court of Justice; or
- 24 5. Circuit Court clerk;

25 (c) "Law enforcement agent" means any "peace officer" as defined in KRS  
26 446.010 and any "law enforcement officer" as defined in KRS 15.310 and  
27 209A.020;

- 1        (d) "Personally identifiable information" means the following:
- 2            1. Biometric, health, or medical data, or insurance information;
- 3            2. Birth and marriage records;
- 4            3. Date of birth;
- 5            4. Financial account number or credit or debit card number;
- 6            5. Home or physical address, including:
  - 7                    a. Any secondary or vacation address;
  - 8                    b. Any property tax or property ownership records; or
  - 9                    c. Any directions to or identifying photographs of any primary,
  - 10                    secondary, or vacation residence;
- 11            6. Home, personal mobile, or direct personal telephone number to the
- 12            individual, except that nothing in this section shall be construed to
- 13            include any record made in the course of performing an official duty
- 14            regardless of the nature of the device used;
- 15            7. Identification of any children of the individual under the age of
- 16            eighteen (18);
- 17            8. Personal electronic mail addresses, except that nothing in this section
- 18            shall be construed to include any record made in the course of
- 19            performing an official duty regardless of the nature of the device used;
- 20            9. Photographs of any vehicle personally owned, leased, or operated by
- 21            the individual, including photographs of any license plates, vehicle
- 22            registration, or vehicle identification numbers;
- 23            10. School, day care, or employment locations or assignments;
- 24            11. Social Security number; or
- 25            12. Vehicle registration;
- 26        (e) "Prosecutor" means any current, former, or retired:
- 27            1. Attorney General or deputy or assistant attorney general;

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1           2. Commonwealth's attorney or assistant Commonwealth's attorney;

2           3. County attorney or assistant county attorney;

3           4. Special prosecutor appointed by law or executive or judicial order; or

4           5. United States attorney or assistant United States attorney;

5           (f) "Public agency" has the same meaning as in Section 1 of this Act; and

6           (g) "Public defender" means a defending attorney, as defined in KRS 31.100.

7           (2) In addition to any protections provided under Section 2 of this Act:

8           (a) Upon written request of a judicial officer, law enforcement agent,  
9           prosecutor, public defender, or immediate family member, or their  
10           authorized agent, a public agency shall designate any of the requestor's  
11           personally identifiable information as confidential and shall not post, re-  
12           post, publish, or otherwise make known the personally identifiable  
13           information. Any person, or authorized agent, who has requested their  
14           information be made confidential may withdraw the request or permit  
15           release of their personally identifiable information at any time;

16           (b) When a public agency receives a written request pursuant to paragraph (a)  
17           of this subsection, the agency shall redact and remove the personally  
18           identifiable information within three (3) business days of receipt of the  
19           request from any public posting or publication existing at the time the  
20           request is received to the extent practicable; and

21           (c) If a public agency cannot redact and remove the personally identifiable  
22           information within three (3) business days, then it shall notify the requestor,  
23           in writing, within twenty-four (24) hours of the failure to redact or remove  
24           the information, specifically identify the information that was not redacted  
25           or removed, and state the reasons that redaction or removal was not  
26           practicable.

27           (3) The exemptions in this section are supplemental to the exemptions provided in

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- 1        Section 2 of this Act and shall not be deemed to replace any exemptions or  
2        personal privacy protections provided in Section 2 of this Act.  
3        (4) Nothing in this section shall prevent a public agency from using personally  
4        identifiable information as required to perform the routine functions of the  
5        agency.