

1 AN ACT relating to open records training.

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

3 ➔SECTION 1. A NEW SECTION OF KRS 61.870 TO 61.884 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) (a) After the effective date of this Act, an employee named an official custodian*
6 *shall complete open records training of not less than two (2) hours within*
7 *ninety (90) days of employment or election.*

8 *(b) Any employee already performing the role of official custodian as of the*
9 *effective date of this Act shall complete open records training of not less*
10 *than two (2) hours within twelve (12) months of the effective date of this*
11 *Act.*

12 *(2) An official custodian shall complete open records training every two (2) years so*
13 *long as he or she remains the official custodian.*

14 *(3) (a) After the effective date of this Act, an employee or officer of a public agency*
15 *who is not an official custodian shall complete not less than one (1) hour of*
16 *open records training within ninety (90) days of employment or election.*

17 *(b) Any employee or officer of a public agency who is not an official custodian*
18 *prior to the effective date of this Act shall complete not less than one (1)*
19 *hour of open records training within twelve (12) months of the effective date*
20 *of this Act.*

21 *(4) (a) The Attorney General shall provide open records training to official*
22 *custodians and any employee or officer of a public agency who is not an*
23 *official custodian.*

24 *(b) A public agency may provide training to employees or officers of public*
25 *agencies who are not official custodians if the training qualifies as open*
26 *records training as defined in Section 2 of this Act and is approved by the*
27 *Attorney General.*

1 **(5) Training shall be conducted in a live format, but may be conducted remotely.**

2 ➔Section 2. KRS 61.870 is amended to read as follows:

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

4 (1) "Public agency" means:

5 (a) Every state or local government officer;

6 (b) Every state or local government department, division, bureau, board,
7 commission, and authority;

8 (c) Every state or local legislative board, commission, committee, and officer;

9 (d) Every county and city governing body, council, school district board, special
10 district board, and municipal corporation;

11 (e) Every state or local court or judicial agency;

12 (f) Every state or local government agency, including the policy-making board of
13 an institution of education, created by or pursuant to state or local statute,
14 executive order, ordinance, resolution, or other legislative act;

15 (g) Any body created by state or local authority in any branch of government;

16 (h) Any body which, within any fiscal year, derives at least twenty-five percent
17 (25%) of its funds expended by it in the Commonwealth of Kentucky from
18 state or local authority funds. However, any funds derived from a state or
19 local authority in compensation for goods or services that are provided by a
20 contract obtained through a public competitive procurement process shall not
21 be included in the determination of whether a body is a public agency under
22 this subsection;

23 (i) Any entity where the majority of its governing body is appointed by a public
24 agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of
25 this subsection; by a member or employee of such a public agency; or by any
26 combination thereof;

27 (j) Any board, commission, committee, subcommittee, ad hoc committee,

1 advisory committee, council, or agency, except for a committee of a hospital
2 medical staff, established, created, and controlled by a public agency as
3 defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this
4 subsection; and

5 (k) Any interagency body of two (2) or more public agencies where each public
6 agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of
7 this subsection;

8 (2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs,
9 diskettes, recordings, software, or other documentation regardless of physical form
10 or characteristics, which are prepared, owned, used, in the possession of or retained
11 by a public agency. "Public record" shall not include any records owned or
12 maintained by or for a body referred to in subsection (1)(h) of this section that are
13 not related to functions, activities, programs, or operations funded by state or local
14 authority;

15 (3) (a) "Software" means the program code which makes a computer system
16 function, but does not include that portion of the program code which contains
17 public records exempted from inspection as provided by KRS 61.878 or
18 specific addresses of files, passwords, access codes, user identifications, or
19 any other mechanism for controlling the security or restricting access to
20 public records in the public agency's computer system.

21 (b) "Software" consists of the operating system, application programs,
22 procedures, routines, and subroutines such as translators and utility programs,
23 but does not include that material which is prohibited from disclosure or
24 copying by a license agreement between a public agency and an outside entity
25 which supplied the material to the agency;

26 (4) (a) "Commercial purpose" means the direct or indirect use of any part of a public
27 record or records, in any form, for sale, resale, solicitation, rent, or lease of a

1 service, or any use by which the user expects a profit either through
2 commission, salary, or fee.

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

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

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

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

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

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

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

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

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

27 (10) "Resident of the Commonwealth" means:

- 1 (a) An individual residing in the Commonwealth;
- 2 (b) A domestic business entity with a location in the Commonwealth;
- 3 (c) A foreign business entity registered with the Secretary of State;
- 4 (d) An individual that is employed and works at a location or locations within the
- 5 Commonwealth;
- 6 (e) An individual or business entity that owns real property within the
- 7 Commonwealth;
- 8 (f) Any individual or business entity that has been authorized to act on behalf of
- 9 an individual or business entity defined in paragraphs (a) to (e) of this
- 10 subsection; or
- 11 (g) A news-gathering organization as defined in KRS 189.635(8)(b)1.a. to e.; **and**

12 **(11) "Open records training" means training that includes:**

- 13 **(a) An overview of the legal requirements of KRS 61.870 to 61.884;**
- 14 **(b) The procedures and requirements for complying with a request for**
- 15 **information;**
- 16 **(c) The role of the Attorney General; and**
- 17 **(d) A description of penalties and other consequences for failure to comply with**
- 18 **KRS 61.870 to 61.884.**

19 ➔Section 3. KRS 61.876 is amended to read as follows:

- 20 (1) Each public agency shall adopt rules and regulations in conformity with the
- 21 provisions of KRS 61.870 to 61.884 to provide full access to public records, to
- 22 protect public records from damage and disorganization, to prevent excessive
- 23 disruption of its essential functions, to provide assistance and information upon
- 24 request and to ensure efficient and timely action in response to application for
- 25 inspection, and such rules and regulations shall include but shall not be limited to:
- 26 (a) The principal office of the public agency and its regular office hours;
- 27 (b) The title, mailing address, and e-mail address of the official custodian of the

- 1 public agency's records;
- 2 (c) The fees, to the extent authorized by KRS 61.874 or other statute, charged for
- 3 copies;
- 4 (d) The procedures to be followed in requesting public records.
- 5 (2) Each public agency shall display in a prominent location accessible to the public,
- 6 including on its website~~[Web site]~~:
- 7 (a) A copy of its rules and regulations pertaining to public records;
- 8 (b) The mailing address, e-mail address, and phone number of the official
- 9 custodian of the records or his or her designee to which all requests for public
- 10 records shall be made; and
- 11 (c) The form developed by the Attorney General under subsection (4) of this
- 12 section that may be used to request public records.
- 13 (3) **Each public agency shall submit to the Attorney General the contact information**
- 14 **of its official custodian provided in subsection (2)(b) of this section. The Attorney**
- 15 **General shall maintain a database of the contact information and publish the**
- 16 **information on its website.**
- 17 **(4)** The Finance and Administration Cabinet may promulgate administrative
- 18 regulations pursuant to KRS Chapter 13A, pertaining to public records, for all state
- 19 administrative agencies, except for the Legislative Research Commission and the
- 20 Administrative Office of the Courts, each of which may promulgate administrative
- 21 regulations for their respective agencies, pertaining to public records.
- 22 ~~(5)~~~~(4)~~ The Attorney General shall promulgate by administrative regulation under
- 23 KRS Chapter 13A a standardized form that may be used to request public records
- 24 from a public agency. The form shall not allow any request for information other
- 25 than the following:
- 26 (a) The name of the requesting party;
- 27 (b) The mailing or e-mail address of the requesting party, if copies of records are

1 requested;

2 (c) Whether the request is for a commercial purpose;

3 (d) A description of the documents requested;

4 (e) A statement that the person making the request:

5 1. Is a resident of the Commonwealth under KRS 61.870(10); and

6 2. The statement includes the manner in which the requester is a resident of
7 the Commonwealth under KRS 61.870(10)(a) to (f); and

8 (f) The signature of the requesting party.

9 ~~(6)~~~~(5)~~ The Attorney General shall make the form readily available to the public,
10 including on the Attorney General's website~~[Web site]~~. The form shall be accepted
11 by every public agency for any request for public records made on or after June 29,
12 2021.

13 ➔Section 4. KRS 61.8746 is amended to read as follows:

14 (1) A person shall not utilize a booking photograph or a photograph of an inmate taken
15 pursuant to KRS 196.099 originally obtained from a public agency for a
16 commercial purpose if:

17 (a) The photograph will be placed in a publication or posted on a website~~[Web
18 site]~~; and

19 (b) Removal of the photograph from the publication or website~~[Web site]~~ requires
20 the payment of a fee or other consideration.

21 (2) Any person who has requested the removal of a booking photograph or photo taken
22 pursuant to KRS 196.099 of himself or herself:

23 (a) Which was subsequently placed in a publication or posted on a website~~[Web
24 site]~~; and

25 (b) Whose removal requires the payment of a fee or other consideration;
26 shall have a right of action in Circuit Court by injunction or other appropriate order
27 and may also recover costs and reasonable attorney's fees.

1 (3) At the court's discretion, any person found to have violated this section in an action
2 brought under subsection (2) of this section, may be liable for damages for each
3 separate violation, in an amount not less than:

4 (a) One hundred (\$100) dollars a day for the first thirty (30) days;

5 (b) Two hundred and fifty (\$250) dollars a day for the subsequent thirty (30)
6 days; and

7 (c) Five hundred (\$500) dollars a day for each day thereafter.

8 If a violation is continued for more than one (1) day, each day upon which the
9 violation occurs or is continued shall be considered and constitute a separate
10 violation.

11 ➔Section 5. KRS 61.872 is amended to read as follows:

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

18 (2) (a) Any resident of the Commonwealth shall have the right to inspect public
19 records. The official custodian may require a written application, signed by
20 the applicant and with his or her name printed legibly on the application,
21 describing the records to be inspected. The official custodian may require the
22 applicant to provide a statement in the written application of the manner in
23 which the applicant is a resident of the Commonwealth under KRS
24 61.870(10)(a) to (f).

25 (b) The written application shall be:

26 1. Hand delivered;

27 2. Mailed;

- 1 3. Sent via facsimile; or
- 2 4. Sent via e-mail to the public agency's official custodian of public
- 3 records or his or her designee at the e-mail address designated in the
- 4 public agency's rules and regulations adopted pursuant to KRS 61.876.
- 5 (c) A public agency shall not require the use of any particular form for the
- 6 submission of an open records request, but shall accept for any request the
- 7 standardized form developed under KRS 61.876~~(5)~~~~(4)~~.
- 8 (3) A resident of the Commonwealth may inspect the public records:
- 9 (a) During the regular office hours of the public agency; or
- 10 (b) By receiving copies of the public records from the public agency through the
- 11 mail. The public agency shall mail copies of the public records to a person
- 12 whose residence or principal place of business is outside the county in which
- 13 the public records are located after he or she precisely describes the public
- 14 records which are readily available within the public agency. If the resident of
- 15 the Commonwealth requesting the public records requests that copies of the
- 16 records be mailed, the official custodian shall mail the copies upon receipt of
- 17 all fees and the cost of mailing.
- 18 (4) If the person to whom the application is directed does not have custody or control
- 19 of the public record requested, that person shall notify the applicant and shall
- 20 furnish the name and location of the official custodian of the agency's public
- 21 records.
- 22 (5) If the public record is in active use, in storage or not otherwise available, the
- 23 official custodian shall immediately notify the applicant and shall designate a place,
- 24 time, and date for inspection of the public records, not to exceed five (5) days from
- 25 receipt of the application, unless a detailed explanation of the cause is given for
- 26 further delay and the place, time, and earliest date on which the public record will
- 27 be available for inspection.

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