

1 AN ACT relating to access to the records and meetings of public agencies.

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) As used in this section:*

6 *(a) "Agency-designated email account" means an email account hosted by a*
7 *third-party provider that has been created in accordance with subsection (4)*
8 *of this section; and*

9 *(b) "Agency-furnished email account" means an email account that is created,*
10 *established, furnished, maintained, or supported by the Commonwealth*
11 *Office of Technology or another department, office, agency, or vendor that*
12 *is accountable to a public agency or the appointing authority of a public*
13 *agency.*

14 *(2) Except as provided in subsection (3) or (4) of this section, a public agency shall*
15 *cause to be furnished to each of its officers, employees, board members, and*
16 *commission members an agency-furnished email account for the purpose of*
17 *conducting the business of the public agency.*

18 *(3) The governing body of a public agency or its appointing authority shall have the*
19 *authority to identify, in writing, the names of specific personnel whose job*
20 *functions and responsibilities are not compatible with, or do not require, the use*
21 *of an agency-furnished email account. Nothing in this section shall require a*
22 *public agency to furnish an email account to those personnel who are identified*
23 *under this subsection.*

24 *(4) In the event that a public agency does not have a department, agency, office, or*
25 *vendor accountable to it that is capable of, or its appointing authority is incapable*
26 *of, providing agency-furnished email accounts, the public agency may approve*
27 *the use of a third-party provider for the purpose of creating an agency-designated*

1 email account for the member or employee to conduct public business, as follows:

2 (a) A public agency acting pursuant to this subsection shall:

3 1. Cause the creation of the agency-designated email account with the
4 third-party provider and assign and provide access to it to the member
5 or employee; or

6 2. Require the member or employee to create the agency-designated
7 email account with the third-party provider and to register the account
8 address with the official records custodian of the public agency; and

9 (b) The public agency shall maintain a log containing the addresses of any
10 agency-designated email accounts assigned or registered pursuant to this
11 subsection. The log of agency-designated email account addresses shall be
12 subject to disclosure pursuant to KRS 61.870 to 61.884. Emails and other
13 documents contained within an agency-designated email account shall be
14 deemed to be in the possession of the public agency for the purposes of KRS
15 61.870 to 61.884.

16 (5) An employee of a public agency shall not use an email account other than an
17 agency-furnished email account or agency-designated email account to conduct
18 the business of the public agency.

19 (6) An employee who violates subsection (5) of this section shall be subject to
20 appropriate discipline by his or her agency's appointing authority or governing
21 body, in addition to other remedies prescribed by law.

22 (7) A member of a board, commission, or public agency shall not use an email
23 account other than an agency-furnished email account or agency-designated
24 email account to conduct the business of the board, commission, or public
25 agency.

26 (8) In addition to other remedies provided by law, a member of a board, commission,
27 or other public agency who violates subsection (7) of this section shall be subject

1 to removal by the officer or the governing authority who appointed that member
2 or otherwise has the authority to remove the member.

3 (9) Notwithstanding any other provision of KRS 61.870 to 61.884, a public agency
4 that complies with subsections (2), (3), and (4) of this section shall only be
5 required to search for or produce to a requesting party electronic information or
6 documents that are stored or contained in:

7 (a) A device that is the property of the public agency; or

8 (b) An email account that is an agency-furnished or agency-designated email
9 account.

10 ➔Section 2. KRS 61.848 is amended to read as follows:

11 (1) The Circuit Court of the county where the public agency has its principal place of
12 business or where the alleged violation occurred shall have jurisdiction to enforce
13 the provisions of KRS 61.805 to 61.850, as they pertain to that public agency, by
14 injunction or other appropriate order on application of any person.

15 (2) A person alleging a violation of the provisions of KRS 61.805 to 61.850 shall not
16 have to exhaust his or her remedies under KRS 61.846 before filing suit in a Circuit
17 Court. However, he or she shall file suit within sixty (60) days from his or her
18 receipt of the written denial referred to in subsections (1) and (2) of KRS 61.846 or,
19 if the public agency refuses to provide a written denial, within sixty (60) days from
20 the date the written complaint was submitted to the presiding officer of the public
21 agency.

22 (3) In an appeal of an Attorney General's decision, where the appeal is properly filed
23 pursuant to subsection (4)(a) of KRS 61.846, the court shall determine the matter de
24 novo.

25 (4) Except as otherwise provided by law or rule of court, proceedings arising under this
26 section take precedence on the docket over all other causes and shall be assigned for
27 hearing and trial at the earliest practicable date.

- 1 (5) Any rule, resolution, regulation, ordinance, or other formal action of a public
2 agency without substantial compliance with the requirements of KRS 61.810,
3 61.815, 61.820, ~~and KRS~~ 61.823, and 61.840 shall be voidable by a court of
4 competent jurisdiction.
- 5 (6) Any person who prevails against any agency in any action in the courts regarding a
6 violation of KRS 61.805 to 61.850, where the violation is found to be willful, may
7 be awarded costs, including reasonable attorneys' fees, incurred in connection with
8 the legal action. In addition, it shall be within the discretion of the court to award
9 the person an amount not to exceed one hundred dollars (\$100) for each instance in
10 which the court finds a violation. Attorneys' fees, costs, and awards under this
11 subsection shall be paid by the agency responsible for the violation.