

1 AN ACT relating to open records.

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) Any employee or officer who is named an official custodian shall complete  
6 open records training of not less than two (2) hours within ninety (90) days  
7 of that employment or election.
- 8 (b) Any employee or officer already performing the role of official custodian  
9 shall complete open records training of not less than two (2) hours within  
10 twelve (12) months.
- 11 (2) An official custodian shall complete open records training of not less than (2)  
12 hours at least once every two (2) years so long as he or she remains the official  
13 custodian.
- 14 (3) (a) Any employee or officer who is not an official custodian shall complete not  
15 less than one (1) hour of open records training within ninety (90) days of  
16 employment or election.
- 17 (b) Any employee or officer who is not an official custodian and already  
18 employed or elected shall complete not less than one (1) hour of open  
19 records training within twelve (12) months.
- 20 (4) (a) The Attorney General shall provide open records training to official  
21 custodians and any employee or officer of a public agency who is not an  
22 official custodian.
- 23 (b) A public agency may provide training to employees or officers of public  
24 agencies who are not official custodians if the training qualifies as open  
25 records training as defined in Section 2 of this Act and is approved by the  
26 Attorney General.
- 27 (5) Open records training shall be conducted in a live format, but may be conducted

1       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~~ does 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 or her  
14 actual 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 under KRS 61.870 to 61.884; 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 **email**~~[-mail]~~ address of the official custodian

1 of the 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, email~~[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 ~~(5)~~~~[(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 as described in subsection (2)(b) of this section. The**  
15 **Attorney General shall maintain a database of the contact information and**  
16 **publish the 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 email~~[e-mail]~~ address of the requesting party, if copies of

1 records are 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)~~<sup>(5)</sup> 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 15.257 is amended to read as follows:

14 (1) The Office of the Attorney General shall, within ninety (90) days of~~[ June 20, 2005,~~  
15 ~~and thereafter, within ninety (90) days of]~~ the effective date of any legislation  
16 amending the provisions of the Open Meetings Act or the Open Records Act,  
17 distribute to **the following officers and employees:**

18 **(a)** All county judge/executives ~~and~~<sup>[,]</sup> mayors;~~;~~<sup>[,]</sup>

19 **(b)** *All* county attorneys ~~and~~<sup>[,]</sup> city attorneys;~~;~~<sup>[,]</sup>

20 **(c)** *All* superintendents of public school districts;~~;~~<sup>[,]</sup>

21 **(d)** *All* presidents of each of the state public postsecondary education institutions  
22 identified in KRS 161.220(4)(b) or 164.001(13) or (17);~~[, and]~~

23 **(e)** *All* attorneys of public school districts and public postsecondary education  
24 institutions throughout Kentucky; **and**

25 **(f)** **All official custodians listed in the Attorney General's database pursuant to**  
26 **Section 3 of this Act;**

27 written information prepared by the Office of the Attorney General that explains the

1 procedural and substantive provisions of the Open Meetings Act, KRS 61.805 to  
2 61.850, and the Open Records Act, KRS 61.870 to 61.884, together with the  
3 information required by KRS 171.223 to be prepared by the Department for  
4 Libraries and Archives concerning proper retention and management of public  
5 records. This distribution may be by electronic means.

6 (2) All superintendents of public school districts and the presidents of each of the state  
7 public postsecondary education institutions identified in KRS 161.220(4)(b) or  
8 164.001(13) or (17) shall be responsible for designating and submitting the names  
9 and addresses of the attorneys to whom this information shall be disseminated to  
10 the Office of the Attorney General.

11 **(3) All official custodians shall be responsible for disseminating the information**  
12 **provided by the Attorney General to the employees of their respective agencies.**

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

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

20 (2) (a) Any resident of the Commonwealth shall have the right to inspect public  
21 records. The official custodian may require a written application, signed by  
22 the applicant and with his or her name printed legibly on the application,  
23 describing the records to be inspected. The official custodian may require the  
24 applicant to provide a statement in the written application of the manner in  
25 which the applicant is a resident of the Commonwealth under KRS  
26 61.870(10)(a) to (f).

27 (b) The written application shall be:



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

1 receipt of the application, unless a detailed explanation of the cause is given for  
2 further delay and the place, time, and earliest date on which the public record will  
3 be available for inspection.

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