

1 AN ACT relating to law enforcement records.

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

3 ➔Section 1. KRS 61.878 is amended to read as follows:

4 (1) The following public records are excluded from the application of KRS 61.870 to
5 61.884 and shall be subject to inspection only upon order of a court of competent
6 jurisdiction, except that no court shall authorize the inspection by any party of any
7 materials pertaining to civil litigation beyond that which is provided by the Rules of
8 Civil Procedure governing pretrial discovery:

9 (a) Public records containing information of a personal nature where the public
10 disclosure thereof would constitute a clearly unwarranted invasion of personal
11 privacy;

12 (b) Records confidentially disclosed to an agency and compiled and maintained
13 for scientific research. This exemption shall not, however, apply to records the
14 disclosure or publication of which is directed by another statute;

15 (c) 1. Records confidentially disclosed to an agency or required by an agency
16 to be disclosed to it, generally recognized as confidential or proprietary,
17 which if openly disclosed would permit an unfair commercial advantage
18 to competitors of the entity that disclosed the records;

19 2. Records confidentially disclosed to an agency or required by an agency
20 to be disclosed to it, generally recognized as confidential or proprietary,
21 which are compiled and maintained:

22 a. In conjunction with an application for or the administration of a
23 loan or grant;

24 b. In conjunction with an application for or the administration of
25 assessments, incentives, inducements, and tax credits as described
26 in KRS Chapter 154;

27 c. In conjunction with the regulation of commercial enterprise,

- 1 including mineral exploration records, unpatented, secret
2 commercially valuable plans, appliances, formulae, or processes,
3 which are used for the making, preparing, compounding, treating,
4 or processing of articles or materials which are trade commodities
5 obtained from a person; or
- 6 d. For the grant or review of a license to do business.
- 7 3. The exemptions provided for in subparagraphs 1. and 2. of this
8 paragraph shall not apply to records the disclosure or publication of
9 which is directed by another statute;
- 10 (d) Public records pertaining to a prospective location of a business or industry
11 where no previous public disclosure has been made of the business' or
12 industry's interest in locating in, relocating within or expanding within the
13 Commonwealth. This exemption shall not include those records pertaining to
14 application to agencies for permits or licenses necessary to do business or to
15 expand business operations within the state, except as provided in paragraph
16 (c) of this subsection;
- 17 (e) Public records which are developed by an agency in conjunction with the
18 regulation or supervision of financial institutions, including but not limited to
19 banks, savings and loan associations, and credit unions, which disclose the
20 agency's internal examining or audit criteria and related analytical methods;
- 21 (f) The contents of real estate appraisals, engineering or feasibility estimates and
22 evaluations made by or for a public agency relative to acquisition of property,
23 until such time as all of the property has been acquired. The law of eminent
24 domain shall not be affected by this provision;
- 25 (g) Test questions, scoring keys, and other examination data used to administer a
26 licensing examination, examination for employment, or academic
27 examination before the exam is given or if it is to be given again;

- 1 (h) Records of law enforcement agencies or agencies involved in administrative
2 adjudication that were compiled in the process of detecting and investigating
3 statutory or regulatory violations if the agency states that the disclosure of the
4 information could pose a risk of~~would~~ harm to the agency or its
5 investigation by revealing the identity of informants or witnesses not
6 otherwise known or by premature release of information to be used in a
7 prospective law enforcement action or administrative adjudication. Unless
8 exempted in whole or in part by other provisions of KRS 61.870 to 61.884 or
9 Section 2 of this Act, public records exempted under this provision shall be
10 open after enforcement action is completed or a decision is made to take no
11 action; however, records or information compiled and maintained by county
12 attorneys,~~or~~ Commonwealth's attorneys, or the Department of Law
13 pertaining to criminal investigations or criminal litigation shall be exempted
14 from the provisions of KRS 61.870 to 61.884 and shall remain exempted after
15 enforcement action, including litigation, is completed or a decision is made to
16 take no action. The exemptions provided by this subsection shall not be used
17 by the custodian of the records to delay or impede the exercise of rights
18 granted by KRS 61.870 to 61.884;
- 19 (i) Preliminary drafts, notes, correspondence with private individuals, other than
20 correspondence which is intended to give notice of final action of a public
21 agency;
- 22 (j) Preliminary recommendations, and preliminary memoranda in which opinions
23 are expressed or policies formulated or recommended;
- 24 (k) All public records or information the disclosure of which is prohibited by
25 federal law or regulation or state law;
- 26 (l) Public records or information the disclosure of which is prohibited or
27 restricted or otherwise made confidential by enactment of the General

1 Assembly, including any information acquired by the Department of Revenue
2 in tax administration that is prohibited from divulgence or disclosure under
3 KRS 131.190;

- 4 (m) 1. Public records the disclosure of which would have a reasonable
5 likelihood of threatening the public safety by exposing a vulnerability in
6 preventing, protecting against, mitigating, or responding to a terrorist act
7 and limited to:
- 8 a. Criticality lists resulting from consequence assessments;
 - 9 b. Vulnerability assessments;
 - 10 c. Antiterrorism protective measures and plans;
 - 11 d. Counterterrorism measures and plans;
 - 12 e. Security and response needs assessments;
 - 13 f. Infrastructure records that expose a vulnerability referred to in this
14 subparagraph through the disclosure of the location, configuration,
15 or security of critical systems, including public utility critical
16 systems. These critical systems shall include but not be limited to
17 information technology, communication, electrical, fire
18 suppression, ventilation, water, wastewater, sewage, and gas
19 systems;
 - 20 g. The following records when their disclosure will expose a
21 vulnerability referred to in this subparagraph: detailed drawings,
22 schematics, maps, or specifications of structural elements, floor
23 plans, and operating, utility, or security systems of any building or
24 facility owned, occupied, leased, or maintained by a public
25 agency; and
 - 26 h. Records when their disclosure will expose a vulnerability referred
27 to in this subparagraph and that describe the exact physical

1 location of hazardous chemical, radiological, or biological
2 materials.

3 2. As used in this paragraph, "terrorist act" means a criminal act intended
4 to:

5 a. Intimidate or coerce a public agency or all or part of the civilian
6 population;

7 b. Disrupt a system identified in subparagraph 1.f. of this paragraph;
8 or

9 c. Cause massive destruction to a building or facility owned,
10 occupied, leased, or maintained by a public agency.

11 3. On the same day that a public agency denies a request to inspect a public
12 record for a reason identified in this paragraph, that public agency shall
13 forward a copy of the written denial of the request, referred to in KRS
14 61.880(1), to the executive director of the Kentucky Office of Homeland
15 Security and the Attorney General.

16 4. Nothing in this paragraph shall affect the obligations of a public agency
17 with respect to disclosure and availability of public records under state
18 environmental, health, and safety programs.

19 5. The exemption established in this paragraph shall not apply when a
20 member of the Kentucky General Assembly seeks to inspect a public
21 record identified in this paragraph under the Open Records Law;

22 (n) Public or private records, including books, papers, maps, photographs, cards,
23 tapes, discs, diskettes, recordings, software, or other documentation regardless
24 of physical form or characteristics, having historic, literary, artistic, or
25 commemorative value accepted by the archivist of a public university,
26 museum, or government depository from a donor or depositor other than a
27 public agency. This exemption shall apply to the extent that nondisclosure is

- 1 requested in writing by the donor or depositor of such records, but shall not
2 apply to records the disclosure or publication of which is mandated by another
3 statute or by federal law;
- 4 (o) Records of a procurement process under KRS Chapter 45A or 56. This
5 exemption shall not apply after:
- 6 1. A contract is awarded; or
 - 7 2. The procurement process is canceled without award of a contract and
8 there is a determination that the contract will not be resolicited;
- 9 (p) Client and case files maintained by the Department of Public Advocacy or any
10 person or entity contracting with the Department of Public Advocacy for the
11 provision of legal representation under KRS Chapter 31;
- 12 (q) Except as provided in KRS 61.168, photographs or videos that depict the
13 death, killing, rape, or sexual assault of a person. However, such photographs
14 or videos shall be made available by the public agency to the requesting party
15 for viewing on the premises of the public agency, or a mutually agreed upon
16 location, at the request of:
- 17 1. a. Any victim depicted in the photographs or videos, his or her
18 immediate family, or legal representative;
 - 19 b. Any involved insurance company or its representative; or
 - 20 c. The legal representative of any involved party;
 - 21 2. Any state agency or political subdivision investigating official
22 misconduct; or
 - 23 3. A legal representative for a person under investigation for, charged with,
24 pled guilty to, or found guilty of a crime related to the underlying
25 incident. The person under investigation for, charged with, pled guilty
26 to, or found guilty of a crime related to the underlying incident or their
27 immediate family shall not be permitted to have access to the

1 photographs or videos;

2 (r) Records confidentially maintained by a law enforcement agency in
3 accordance with a wellness program, including an early intervention system,
4 as described in KRS 15.409; and

5 (s) Communications of a purely personal nature unrelated to any governmental
6 function.

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

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

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

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

27 (6) When material is made available pursuant to a request under subsection (1)(q) of

1 this section, the public agency shall not be required to make a copy of the recording
2 except as provided in KRS 61.169, and the requesting parties shall not be limited in
3 the number of times they may view the material.

4 ➔Section 2. KRS 17.150 is amended to read as follows:

5 (1) Every sheriff, chief of police, coroner, jailer, prosecuting attorney, probation
6 officer, parole officer; warden or superintendent of a prison, reformatory,
7 correctional school, mental hospital, or institution for the intellectually disabled;
8 Department of Kentucky State Police; state fire marshal; Board of Alcoholic
9 Beverage Control; Cabinet for Health and Family Services; Transportation Cabinet;
10 Department of Corrections; Department of Juvenile Justice; and every other person
11 or criminal justice agency, except the Court of Justice and the Department of Public
12 Advocacy, public or private, dealing with crimes or criminals or with delinquency
13 or delinquents, when requested by the cabinet, shall:

- 14 (a) Install and maintain records needed for reporting data required by the cabinet;
15 (b) Report to the cabinet as and when the cabinet requests all data demanded by
16 it, except that the reports concerning a juvenile delinquent shall not reveal the
17 juvenile's or the juvenile's parents' identity;
18 (c) Give the cabinet or its accredited agent access for purpose of inspection; and
19 (d) Cooperate with the cabinet to the end that its duties may be properly
20 performed.

21 (2) Intelligence and investigative reports maintained by criminal justice agencies are
22 subject to public inspection if prosecution is completed or a determination not to
23 prosecute has been made. However, portions of the records may be withheld from
24 inspection *in accordance with subsection (1)(h) of Section 1 of this Act, or* if the
25 inspection would disclose:

- 26 (a) The name or identity of any confidential informant or information which may
27 lead to the identity of any confidential informant;

- 1 (b) Information of a personal nature, the disclosure of which will not tend to
2 advance a wholesome public interest or a legitimate private interest;
- 3 (c) Information which may endanger the life or physical safety of law
4 enforcement personnel; or
- 5 (d) Information contained in the records to be used in a prospective law
6 enforcement action.
- 7 (3) When a demand for the inspection of the records is refused by the custodian of the
8 record, the burden shall be upon the custodian to justify the refusal of inspection
9 with specificity. Exemptions provided by this section shall not be used by the
10 custodian of the records to delay or impede the exercise of rights granted by this
11 section.
- 12 (4) Centralized criminal history records are not subject to public inspection.
13 Centralized history records mean information on individuals collected and compiled
14 by the Justice and Public Safety Cabinet from criminal justice agencies and
15 maintained in a central location consisting of identifiable descriptions and notations
16 of arrests, detentions, indictments, information, or other formal criminal charges
17 and any disposition arising therefrom, including sentencing, correctional
18 supervision, and release. The information shall be restricted to that recorded as the
19 result of the initiation of criminal proceedings or any proceeding related thereto.
20 Nothing in this subsection shall apply to documents maintained by criminal justice
21 agencies which are the source of information collected by the Justice and Public
22 Safety Cabinet. Criminal justice agencies shall retain the documents and no official
23 thereof shall willfully conceal or destroy any record with intent to violate the
24 provisions of this section.
- 25 (5) The provisions of KRS Chapter 61 dealing with administrative and judicial
26 remedies for inspection of public records and penalties for violations thereof shall
27 be applicable to this section.

- 1 (6) The secretary of justice and public safety shall adopt the administrative regulations
2 necessary to carry out the provisions of the criminal history record information
3 system and to ensure~~insure~~ the accuracy of the information based upon
4 recommendations submitted by the commissioner, Department of Kentucky State
5 Police.
- 6 (7) The Administrative Office of the Courts may, upon suitable agreement between the
7 Chief Justice and the secretary of justice and public safety, supply criminal justice
8 information and data to the cabinet. No information, other than that required by
9 KRS 27A.350 to 27A.420 and 27A.440, shall be solicited from a circuit clerk,
10 justice or judge, court, or agency of the Court of Justice unless the solicitation or
11 request for information is made pursuant to an agreement which may have been
12 reached between the Chief Justice and the secretary of justice and public safety.