

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

1 in tax administration that is prohibited from divulgence or disclosure under
2 KRS 131.190;

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

1 materials.

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

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

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

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

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

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

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

21 (n) Public or private records, including books, papers, maps, photographs, cards,
22 tapes, discs, diskettes, recordings, software, or other documentation regardless
23 of physical form or characteristics, having historic, literary, artistic, or
24 commemorative value accepted by the archivist of a public university,
25 museum, or government depository from a donor or depositor other than a
26 public agency. This exemption shall apply to the extent that nondisclosure is
27 requested in writing by the donor or depositor of such records, but shall not

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

- 1 (r) Records confidentially maintained by a law enforcement agency in
2 accordance with a wellness program, including an early intervention system,
3 as described in KRS 15.409; and
- 4 (s) Communications of a purely personal nature unrelated to any governmental
5 function.
- 6 (2) No exemption in this section shall be construed to prohibit disclosure of statistical
7 information not descriptive of any readily identifiable person.
- 8 (3) No exemption in this section shall be construed to deny, abridge, or impede the
9 right of a public agency employee, including university employees, an applicant for
10 employment, or an eligible on a register to inspect and to copy any record including
11 preliminary and other supporting documentation that relates to him or her. The
12 records shall include but not be limited to work plans, job performance, demotions,
13 evaluations, promotions, compensation, classification, reallocation, transfers, lay-
14 offs, disciplinary actions, examination scores, and preliminary and other supporting
15 documentation. A public agency employee, including university employees,
16 applicant, or eligible shall not have the right to inspect or to copy any examination
17 or any documents relating to ongoing criminal or administrative investigations by
18 an agency.
- 19 (4) If any public record contains material which is not excepted under this section, the
20 public agency shall separate the excepted and make the nonexcepted material
21 available for examination.
- 22 (5) The provisions of this section shall in no way prohibit or limit the exchange of
23 public records or the sharing of information between public agencies when the
24 exchange is serving a legitimate governmental need or is necessary in the
25 performance of a legitimate government function.
- 26 (6) When material is made available pursuant to a request under subsection (1)(q) of
27 this section, the public agency shall not be required to make a copy of the recording

1 except as provided in KRS 61.169, and the requesting parties shall not be limited in
2 the number of times they may view the material.