

1 AN ACT relating to open records.

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

3 ➔Section 1. KRS 61.870 is amended to read as follows:

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

- 5 (1) "Public agency" means:
- 6 (a) Every state or local government officer;
 - 7 (b) Every state or local government department, division, bureau, board,
8 commission, and authority;
 - 9 (c) Every state or local legislative board, commission, committee, and officer;
 - 10 (d) Every county and city governing body, council, school district board, special
11 district board, and municipal corporation;
 - 12 (e) Every state or local court or judicial agency;
 - 13 (f) Every state or local government agency, including the policy-making board of
14 an institution of education, created by or pursuant to state or local statute,
15 executive order, ordinance, resolution, or other legislative act;
 - 16 (g) Any body created by state or local authority in any branch of government;
 - 17 (h) Any body which, within any fiscal year, derives at least twenty-five percent
18 (25%) of its funds expended by it in the Commonwealth of Kentucky from
19 state or local authority funds. However, any funds derived from a state or
20 local authority in compensation for goods or services that are provided by a
21 contract obtained through a public competitive procurement process shall not
22 be included in the determination of whether a body is a public agency under
23 this subsection;
 - 24 (i) Any entity where the majority of its governing body is appointed by a public
25 agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of
26 this subsection; by a member or employee of such a public agency; or by any
27 combination thereof;

- 1 (j) Any board, commission, committee, subcommittee, ad hoc committee,
2 advisory committee, council, or agency, except for a committee of a hospital
3 medical staff, established, created, and controlled by a public agency as
4 defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this
5 subsection; and
- 6 (k) Any interagency body of two (2) or more public agencies where each public
7 agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of
8 this subsection;
- 9 (2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs,
10 diskettes, recordings, software, or other documentation regardless of physical form
11 or characteristics, which are prepared, owned, used, in the possession of or retained
12 by a public agency. "Public record" shall not include any records owned or
13 maintained by or for a body referred to in subsection (1)(h) of this section that are
14 not related to functions, activities, programs, or operations funded by state or local
15 authority;
- 16 (3) (a) "Software" means the program code which makes a computer system
17 function, but does not include that portion of the program code which contains
18 public records exempted from inspection as provided by KRS 61.878 or
19 specific addresses of files, passwords, access codes, user identifications, or
20 any other mechanism for controlling the security or restricting access to
21 public records in the public agency's computer system.
- 22 (b) "Software" consists of the operating system, application programs,
23 procedures, routines, and subroutines such as translators and utility programs,
24 but does not include that material which is prohibited from disclosure or
25 copying by a license agreement between a public agency and an outside entity
26 which supplied the material to the agency;
- 27 (4) (a) "Commercial purpose" means the direct or indirect use of any part of a public

1 record or records, in any form, for sale, resale, solicitation, rent, or lease of a
2 service, or any use by which the user expects a profit either through
3 commission, salary, or fee.

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

- 5 1. Publication or related use of a public record by a newspaper or
6 periodical;
- 7 2. Use of a public record by a radio or television station in its news or
8 other informational programs; or
- 9 3. Use of a public record in the preparation for prosecution or defense of
10 litigation, or claims settlement by the parties to such action, or the
11 attorneys representing the parties;

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

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

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

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

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

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

14 ➔Section 2. KRS 61.872 is amended to read as follows:

- 15 (1) All public records shall be open for inspection by any resident of the
 16 Commonwealth, except as otherwise provided by KRS 61.870 to 61.884, and
 17 suitable facilities shall be made available by each public agency for the exercise of
 18 this right. No resident of the Commonwealth shall remove original copies of public
 19 records from the offices of any public agency without the written permission of the
 20 official custodian of the record.
- 21 (2) (a) Any resident of the Commonwealth shall have the right to inspect public
 22 records. The official custodian may require a written application, signed by
 23 the applicant and with his or her name printed legibly on the application,
 24 describing the records to be inspected. The official custodian may require the
 25 applicant to provide:
- 26 1. A statement in the written application indicating~~[of]~~ the manner in
 27 which the applicant is a resident of the Commonwealth under KRS

1 61.870(10)(a) to ~~(e)~~~~(f)~~; and

2 2. A government-issued photo identification, or facsimile thereof, that
 3 includes the person's address, if the applicant possesses photo
 4 identification. If an applicant does not possess photo identification, the
 5 agency may require an alternative form of identification or proof
 6 evidencing the manner in which the applicant is a resident of the
 7 Commonwealth under subsection (10) of Section 1 of this Act.

8 (b) The written application and proof of residency, if required by the public
 9 agency pursuant to paragraph (a)2. of this subsection, shall be:

- 10 1. Hand delivered;
 11 2. Mailed;
 12 3. Sent via facsimile; or
 13 4. Sent via e-mail to the public agency's official custodian of public
 14 records or his or her designee at the e-mail address designated in the
 15 public agency's rules and regulations adopted pursuant to KRS 61.876.

16 (c) A public agency shall not require the use of any particular form for the
 17 submission of an open records request, but shall accept for any request the
 18 standardized form developed under KRS 61.876(4).

19 (d) All identification, or facsimile thereof, required by or provided to the public
 20 agency under paragraph (a) or (b) of this subsection shall not be considered
 21 open records under KRS 61.870 to 61.884, shall remain confidential, and
 22 shall not be disclosed by the public agency.

23 (3) A resident of the Commonwealth may inspect the public records:

- 24 (a) During the regular office hours of the public agency; or
 25 (b) By receiving copies of the public records from the public agency through the
 26 mail. The public agency shall mail copies of the public records to a person
 27 whose residence or principal place of business is outside the county in which

1 the public records are located after he or she precisely describes the public
2 records which are readily available within the public agency. If the resident of
3 the Commonwealth requesting the public records requests that copies of the
4 records be mailed, the official custodian shall mail the copies upon receipt of
5 all fees and the cost of mailing.

6 (4) If the person to whom the application is directed does not have custody or control
7 of the public record requested, that person shall notify the applicant and shall
8 furnish the name and location of the official custodian of the agency's public
9 records.

10 (5) If the public record is in active use, in storage or not otherwise available, the
11 official custodian shall immediately notify the applicant and shall designate a place,
12 time, and date for inspection of the public records, not to exceed five (5) days from
13 receipt of the application, unless a detailed explanation of the cause is given for
14 further delay and the place, time, and earliest date on which the public record will
15 be available for inspection.

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

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

22 (1) Each public agency shall adopt rules and regulations in conformity with the
23 provisions of KRS 61.870 to 61.884 to provide full access to public records, to
24 protect public records from damage and disorganization, to prevent excessive
25 disruption of its essential functions, to provide assistance and information upon
26 request and to ensure efficient and timely action in response to application for
27 inspection, and such rules and regulations shall include but shall not be limited to:

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

- 1 (d) A description of the documents requested;
- 2 (e) A statement that the person making the request:
- 3 1. Is a resident of the Commonwealth under KRS 61.870(10); and
- 4 2. The statement includes the manner in which the requester is a resident of
- 5 the Commonwealth under KRS 61.870(10)(a) to ~~(e)~~~~(f)~~; and
- 6 (f) The signature of the requesting party.
- 7 (5) The Attorney General shall make the form readily available to the public, including
- 8 on the Attorney General's ~~website~~~~[Web site]~~. The form shall be accepted by every
- 9 public agency for any request for public records made on or after June 29, 2021.

10 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO

11 READ AS FOLLOWS:

12 **As used in this section and Sections 5 and 6 of this Act:**

- 13 **(1) "Military installation" has the same meaning as in 10 U.S.C. sec. 2801(c)(4); and**
- 14 **(2) "Representative of the military installation" means a current or former member**
- 15 **of the Armed Forces of the United States or a civilian who works closely with the**
- 16 **military, designated by the commanding officer of the military installation to**
- 17 **represent the interests of the military installation and national security.**

18 ➔Section 5. KRS 100.133 is amended to read as follows:

- 19 (1) Before a planning unit may engage in planning operations, a planning commission
- 20 shall be appointed for the unit in conformance with an adopted agreement.
- 21 (2) A planning commission shall consist of at least five (5), but not more than twenty
- 22 (20) members.
- 23 (3) The Governor shall have the privilege of appointing a member to the commission to
- 24 which the capital city belongs in addition to the number of members specified for
- 25 that planning commission.
- 26 (4) Where extraterritorial jurisdiction is exercised for subdivision regulations or other
- 27 regulations, the county judge/executive of each affected county may appoint a

1 member to the planning commission of the planning unit exercising such
2 jurisdiction in addition to the number of members specified for that planning
3 commission.

4 (5) At least two-thirds (2/3) of the members of every planning commission shall be
5 citizen members.

6 (6) A regional planning commission shall include at least one (1) citizen member from
7 each joint planning unit who is also a member of the joint planning commission.

8 (7) Where the jurisdiction of a planning unit includes or is adjacent to a military
9 installation, a representative of the military installation may be a nonvoting ex
10 officio member of the commission, in addition to the number of members
11 specified for that planning commission, to advise on matters relating to national
12 security or other concerns for the installation.

13 (8) If one (1) city only joins with one (1) county, then each shall have equal
14 representation.

15 ~~(9)~~(8) Except as provided in KRS 100.137, at least one (1) of the county
16 representatives of the planning commission of a joint planning unit containing a
17 county with an unincorporated area population exceeding one thousand (1,000)
18 persons shall be a resident of the unincorporated area of that county.

19 ~~(10)~~(9) Whenever this chapter requires a city without its consent to belong to a joint
20 planning unit, then KRS 100.137 shall apply.

21 ➔Section 6. KRS 100.137 is amended to read as follows:

22 (1) Except in a consolidated local government, counties with a population of 300,000
23 or more inhabitants shall be a planning unit and shall have a planning commission
24 which commission shall be composed of three (3) members, who are nonresidents
25 of the largest city of the county, appointed by the county judge/executive of such
26 county; three (3) members who are residents of the largest city of the county
27 appointed by the mayor of that city; and the mayor of the largest city, or his or her

1 designee; the county judge/executive, or his or her designee; the director of works
2 of the largest city in the county; and the county road engineer. The county
3 judge/executive and the mayor together shall ensure that three (3) of the six (6)
4 appointees are citizens who have no direct financial interest in the land
5 development and construction industry. If the commission appoints a citizen
6 member to fill a vacancy, the commission shall ensure that the balance is
7 maintained. Where the jurisdiction of a planning unit includes or is adjacent to a
8 military installation, the unit may allow a representative of the military
9 installation to serve as a nonvoting ex officio eleventh member of the commission
10 to advise on matters relating to national security or other concerns for the
11 installation. All ten (10) members and, if applicable, the ex officio member of the
12 planning commission shall be required to disclose any personal or family
13 commercial interest relevant to land use, new development supply, or new
14 development construction. The disclosure shall be a written, signed statement of the
15 general nature of the member's interest. The disclosure shall be filed with the
16 commission's records under KRS 100.167 and shall be available for public
17 inspection during regular business hours. A member shall not vote on an issue in
18 which the member or member's family has an interest. The willful failure of a
19 member to disclose an interest, or a member's voting on an issue in which the
20 member or member's family has a known interest, shall subject the member to
21 removal proceedings under KRS 100.157.

- 22 (2) A county with a consolidated local government created pursuant to KRS Chapter
23 67C shall be a planning unit and shall have a planning commission which shall
24 include eight (8) members who are residents of the planning unit, approved by the
25 mayor of the consolidated local government pursuant to the provisions of KRS
26 67C.139. The membership of the planning commission shall also include the mayor
27 of the consolidated local government, or his or her designee, and the director of

1 public works of the consolidated local government, or his or her designee, or the
2 county engineer as determined by the mayor. If the director of public works
3 designates a designee, the designee shall be either a civil or highway engineer
4 licensed under KRS Chapter 322, and shall have at least three (3) years' practical
5 road building, road design, or transportation planning experience. The mayor shall
6 ensure that four (4) of the eight (8) appointees are citizens who have no direct
7 financial interest in the land development and construction industry. If the
8 commission appoints a citizen member to fill a vacancy, the commission shall
9 ensure that the balance is maintained. Where the jurisdiction of a planning unit
10 includes or is adjacent to a military installation, the unit may allow a
11 representative of the military installation to serve as a nonvoting ex officio
12 eleventh member of the commission to advise on matters relating to national
13 security or other concerns for the installation. All ten (10) members and, if
14 applicable, the ex officio member of the planning commission shall be required to
15 disclose any personal or family commercial interest relevant to land use, new
16 development supply, or new development construction. The disclosure shall be a
17 written, signed statement of the general nature of the member's interest. The
18 disclosure shall be filed with the commission's records pursuant to KRS 100.167
19 and shall be available for public inspection during regular business hours. A
20 member shall not vote on an issue in which the member or member's family has an
21 interest. The willful failure of a member to disclose an interest, or a member's
22 voting on an issue in which the member or member's family has a known interest,
23 shall subject the member to removal proceedings pursuant to KRS 100.157.

24 (3) In counties containing a consolidated local government, all legislation
25 implementing or amending the plan or amended plan which affects cities with a
26 population equal to or greater than three thousand (3,000) based upon the most
27 recent federal decennial census or any city with a population of less than three

1 thousand (3,000) based upon the most recent federal decennial census that regulated
2 land use under the provisions of this chapter prior to January 1, 2014, shall be
3 enacted by such cities and all other legislation implementing the plan or amended
4 plan shall be enacted by the fiscal court or, in the case of a consolidated local
5 government, by the consolidated local government.

6 (4) In all other counties the establishment of a planning unit is optional, but any
7 planning unit established in other counties shall comply with the remaining
8 provisions of this chapter.

9 ➔Section 7. Sections 4, 5, and 6 of this Act may be cited as the Military
10 Installation Protection Act.