

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 a statement in the written application and present  
 26 government-issued photo identification that includes the person's address, if  
 27 the applicant possesses photo identification, indicating~~[of]~~ the manner in

1 which the applicant is a resident of the Commonwealth under KRS  
2 61.870(10)(a) to ~~(e)(f)~~. *If an applicant does not possess photo*  
3 *identification, the agency may require an alternative form of identification*  
4 *or proof evidencing the manner in which the applicant is a resident of the*  
5 *Commonwealth under subsection (10) of Section 1 of this Act.*

6 (b) The written application shall be:

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

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

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

- 17 (a) During the regular office hours of the public agency; or
- 18 (b) By receiving copies of the public records from the public agency through the  
19 mail. The public agency shall mail copies of the public records to a person  
20 whose residence or principal place of business is outside the county in which  
21 the public records are located after he or she precisely describes the public  
22 records which are readily available within the public agency. If the resident of  
23 the Commonwealth requesting the public records requests that copies of the  
24 records be mailed, the official custodian shall mail the copies upon receipt of  
25 all fees and the cost of mailing.

26 (4) If the person to whom the application is directed does not have custody or control  
27 of the public record requested, that person shall notify the applicant and shall

1       furnish the name and location of the official custodian of the agency's public  
2       records.

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

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

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

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

- 21      (a) The principal office of the public agency and its regular office hours;  
22      (b) The title, mailing address, and e-mail address of the official custodian of the  
23      public agency's records;  
24      (c) The fees, to the extent authorized by KRS 61.874 or other statute, charged for  
25      copies;  
26      (d) The procedures to be followed in requesting public records.

27      (2) Each public agency shall display in a prominent location accessible to the public,

1 including on its website~~[Web site]~~:

2 (a) A copy of its rules and regulations pertaining to public records;

3 (b) The mailing address, e-mail address, and phone number of the official  
4 custodian of the records or his or her designee to which all requests for public  
5 records shall be made; and

6 (c) The form developed by the Attorney General under subsection (4) of this  
7 section that may be used to request public records.

8 (3) The Finance and Administration Cabinet may promulgate administrative  
9 regulations pursuant to KRS Chapter 13A, pertaining to public records, for all state  
10 administrative agencies, except for the Legislative Research Commission and the  
11 Administrative Office of the Courts, each of which may promulgate administrative  
12 regulations for their respective agencies, pertaining to public records.

13 (4) The Attorney General shall promulgate by administrative regulation in accordance  
14 with~~[under]~~ KRS Chapter 13A a standardized form that may be used to request  
15 public records from a public agency. The form shall not allow any request for  
16 information other than the following:

17 (a) The name of the requesting party;

18 (b) The mailing or e-mail address of the requesting party, if copies of records are  
19 requested;

20 (c) Whether the request is for a commercial purpose;

21 (d) A description of the documents requested;

22 (e) A statement that the person making the request:

23 1. Is a resident of the Commonwealth under KRS 61.870(10); and

24 2. The statement includes the manner in which the requester is a resident of  
25 the Commonwealth under KRS 61.870(10)(a) to (e)~~[(f)]~~; and

26 (f) The signature of the requesting party.

27 (5) The Attorney General shall make the form readily available to the public, including

- 1 on the Attorney General's website~~[Web-site]~~. The form shall be accepted by every
- 2 public agency for any request for public records made on or after June 29, 2021.