



Open Records

The General Assembly finds and declares that the basic policy of KRS 61.870 to 61.884 is that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.

Kentucky General Assembly (1992)

The General Assembly finds an essential relationship between the intent of this chapter and that of KRS 171.410 to 171.740, dealing with the management of public records, and of KRS 42.720 to 42.742, 45.253, 171.420, 186A.040, and 186A.285, dealing with the coordination of strategic planning for computerized information systems in state government; and that to ensure the efficient administration of government and to provide accountability of government activities, public agencies are required to manage and maintain their records according to the requirements of these statutes. The General Assembly further recognizes that while all government agency records are public records for the purpose of their management, *not all these records are required to be open to public access*, as defined in this chapter, some being exempt under KRS 61.878.

What is a Record?

- "Public record" means all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned or maintained by or for a body referred to in subsection (1)(h) of this section that are not related to functions, activities, programs, or operations funded by state or local authority;



What is a Public Agency?



"Public agency" means:

- (a) Every state or local government officer;
- (b) Every state or local government department, division, bureau, board, commission and authority;
- (c) Every state or local legislative board, commission, committee and officer;
- (d) Every county and city governing body, council, school district board, special district board and municipal corporation;
- (e) Every state or local court or judicial agency;
- (f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;
- (g) Any body created by state or local authority in any branch of government;
- (h) Any body which, within any fiscal year, derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds. However, any funds derived from a state or local authority in compensation for goods or services that are provided by a contract obtained through a public competitive procurement process shall not be included in the determination of whether a body is a public agency under this subsection;
- (i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof;
- (j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and
- (k) Any interagency body of two (2) or more public agencies where each public agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this subsection

Who can Request Records?



All public records shall be open for inspection by any resident of the Commonwealth, except as otherwise provided by [KRS 61.870](#) to [61.884](#), and suitable facilities shall be made available by each public agency for the exercise of this right.

“Resident of the Commonwealth” means:

- (a) An individual residing in the Commonwealth;
- (b) A domestic business entity with a location in the Commonwealth;
- (c) A foreign business entity registered with the Secretary of State;
- (d) An individual that is employed and works at a location or locations within the Commonwealth;
- (e) An individual or business entity that owns real property within the Commonwealth;
- (f) Any individual or business entity that has been authorized to act on behalf of an individual or business entity defined in paragraphs (a) to (e) of this subsection; or
- (g) A news-gathering organization as defined in KRS 189.635(8)(b)1.a. to e.

Written Policy



Publicly post the following (including on-line):

1. Principal office/office hours;
2. Title, address & e-mail of the official custodian of the records;
3. Fees;
4. Open records request procedures; and
5. Any other matters.

Keep it updated!

Written Application



Written application to the records custodian may be required for inspection of documents:

- (A) Printed name;
- (B) Signature; and
- (C) Records description.

No specific application form required

- The Attorney General Standardized Form recommended:

https://www.ag.ky.gov/Open%20Records%20Advisory/2021_Standardized_Open_Records_Request_Form_V3.pdf

Form OAG-01, June 2021

Request to Inspect Public Records

Pursuant to the Kentucky Open Records Act ("the Act"), KRS 61.870 et seq., the undersigned requests to inspect the public records which are described below.

Requester's contact information.

Name: _____

Mailing Address: _____

E-mail Address (if applicable): _____

Records to be inspected: _____

Statement regarding the use of public records. KRS 61.870(4) defines "commercial purpose" as "the direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee." However, "commercial purpose" does not include the publication or related use of the public record by a newspaper or periodical, by a radio or television station in its news or informational program, or by use in the prosecution or defense of litigation by the parties to such an action or their attorney.

This request is (choose one):

☐ NOT for a commercial purpose; or

☐ FOR a commercial purpose.

Statement regarding residency. I further state that I am a resident of Kentucky because I am (please check one):

☐ An individual residing in the Commonwealth; or

☐ A domestic business entity with a location in the Commonwealth; or

☐ A foreign business entity registered with the Kentucky Secretary of State; or

☐ An individual that is employed and works at a location within the Commonwealth; or

☐ An individual or business entity that owns real property within the Commonwealth; or

☐ An individual or business entity that has been authorized to act on behalf of an individual or business entity listed above; or

☐ A news-gathering organization as defined in KRS 189.635(6)(b)1a. to e.

Signature: _____ Date: _____

Pursuant to KRS 61.876(4), the Office of Attorney General has promulgated by administrative regulation this form. See 40 KAR 1:040.

Inspection /Mailing



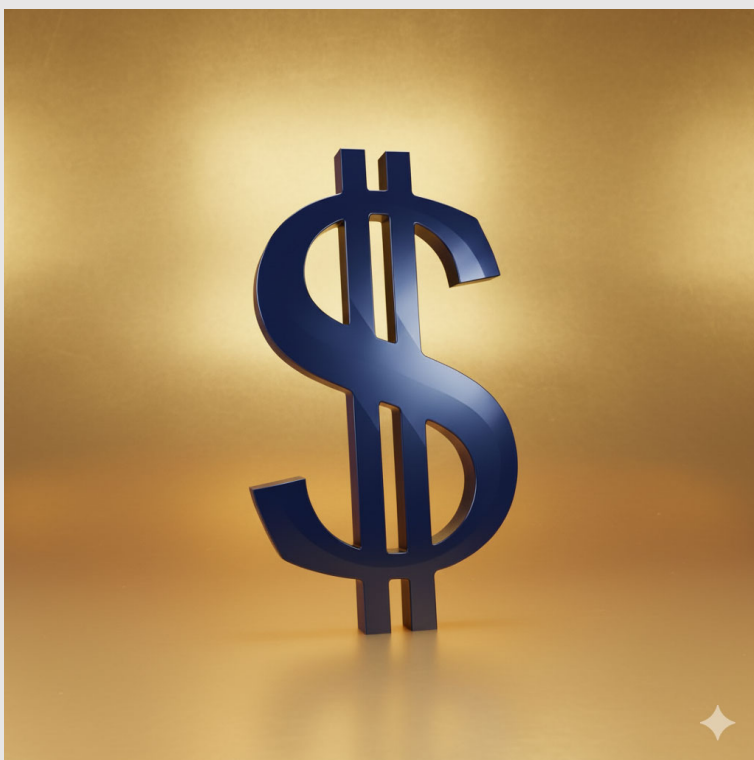
During regular office hours; or

Via mail

Mandatory, if requested by a party whose residence or principal place of business is outside the county in which the records are located.

The agency may delay mailing the records until all costs are received.

Make sure costs are accurate! Know the exact number of pages and postage.



Non-commercial purpose

\$0.10/page—County clerk exceptions

Tapes, discs, etc.—cost of reproduction

Postage

If electronic format with an email receipt request—no charge

Commercial purpose

Agreement required

Staff time

Other costs

Booking/inmate photo exception (KRS 61.8746)

Payment prior to production—Discretionary

KRS 61.872(4,6)

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

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

25-ORD-047

- 792 records that are responsive to the Appellant's request, consisting of 6,234 pages.
- Estimated to take 52.8-103.9 hours to process.
- Found not unreasonable.

KRS 61.872(5)/61.880(1)

KRS 61.872(5) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed five (5) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection.

KRS 61.880(1) Denials—cite exception & applicability explanation



FAILURE TO MEET THE FIVE DAYS REQUIREMENT

23-ORD-034

Day 7. No responsive records.

23-ORD-237

No response. No responsive records.

23-ORD-273

The Appellant initiated this appeal because he received no response of any kind to his request. The fact the requested records are exempt from inspection under the Act does not alleviate the Department of its duty under *KRS 61.880(1)* to respond within five business days to each and every request to inspect records made under the Act.

FAILURE TO CITE KRS 61.872(5)

22-ORD-295

Over 1,000 responsive documents requiring redaction.

- Failed to cite to KRS 61.872(5).
- Failed to provide detailed explanation.
- Waffled on production date.

25-ORD-008

UK—64-part request

- “Given the number of parts [and] the breadth of [the] request, it will take AT LEAST thirty days to respond.”
- ...the Attorney General has recognized that persons requesting large volumes of records should “expect reasonable delays in records production.”
- A vague statement about the volume of a request is not a “detailed explanation” under KRS 61.872(5).

FAILURE TO CITE KRS 61.872(5)

23-ORD-013

Cited to KRS 61.872(5) inappropriately.

- The university stated that they would respond at a later date due to “...several time sensitive matters that require[d] immediate attention of staff”; and
- “...closed for business from December 16, 2022 through January 2, 2023.”

25-ORD-073

- ...notified the Appellant on September 20, 2024, that it would take 30 days to issue a response.
- ...did not specifically invoke KRS 61.872(5) or notify the Appellant of the earliest date on which the public records would be available.

CUSTODIAN OF RECORDS

23-ORD-300

District failed to comply with an open records request as the employee that monitored the email address was no longer with the agency.

- ...the Act requires every public agency to post on its website the contact information, including an email address, for its official custodian of records. *See KRS 61.876(2)(b)*. That email address is the address to which requests to inspect records may be submitted by email under *KRS 61.872(2)(b)4*. If the email address listed on its website is not the proper email address for residents of the Commonwealth to submit requests to inspect public records, then the District also has violated the Act by failing to post on its website the email address of its official records custodian. The District's failure to respond to the Appellant's request in five business days therefore cannot be excused by the Appellant's not sending her request to the proper email address.

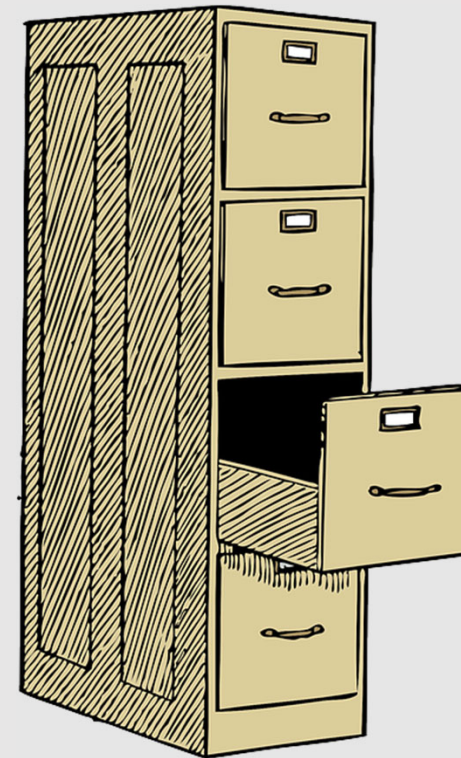
Common Procedural Mistakes



AN INDIVIDUAL'S PERSONAL RECORDS

Any person shall have access to any public record relating to him or in which he is mentioned by name, upon presentation of appropriate identification, subject to the provisions of KRS 61.878.

- Don't deny without an exception!



FAILURE TO CITE APPLICABILITY OF KRS 61.878 EXCEPTIONS

25-ORD-058

- If the agency chooses to deny the request, it “shall include a statement of the specific exception authorizing the withholding of the record *and a brief explanation of how the exception applies to the record withheld.*”
- Although KRS 61.880(1) requires the explanation in support of denial to be “brief,” the response cannot be “limited and perfunctory.”
- The agency failed to explain how any of the cited exemptions applied to the records withheld, and for that reason, the court held, the agency violated KRS 61.880(1).

FAILURE TO CITE APPLICABILITY OF KRS 61.878 EXCEPTIONS

Most Relevant Exceptions

- Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy
- Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;
- Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:
 - In conjunction with an application for or the administration of a loan or grant;
 - In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;
 - For the grant or review of a license to do business
- Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth.

FAILURE TO CITE APPLICABILITY OF KRS 61.878 EXCEPTIONS

Most Relevant Exceptions

- The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired.
- Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information could pose an articulable risk of harm to the agency or its investigation by revealing the identity of informants or witnesses not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Potentially open after conclusion of the action.
- ...records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action.
- Photographs or videos that depict the death, killing, rape, or sexual assault of a person.
 - Some exceptions.

FAILURE TO CITE APPLICABILITY OF KRS 61.878 EXCEPTIONS

Most Relevant Exceptions

- Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency
- Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended
- All public records or information the disclosure of which is prohibited by federal law or regulation or state law
 - KRS 197.025—Jail Video Exception
- Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly
- Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act

FAILURE TO CITE APPLICABILITY OF KRS 61.878 EXCEPTIONS

Most Relevant Exceptions

- Records of a procurement process under KRS Chapter 45A or 56. This exemption shall not apply after:
 1. A contract is awarded; or
 2. 2. The procurement process is canceled without award of a contract and there is a determination that the contract will not be resolicited
- Communications of a purely personal nature unrelated to any governmental function.

Enforcement—Attorney General



- Provision of written request and response
- Issue written decision—20 days
 - Decision timeline may be extended by an additional 30 days
- 30 day Circuit Court appeal period

Enforcement—Circuit Court



- No Attorney General exhaustion requirement
- Burden of proof is on the public agency
- Willful violation
 - Court costs, including reasonable attorney fees
 - \$25/day





Contact Information

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