



**Kentucky  
Open Meetings  
and  
Open Records  
Laws**

*Statutes and Q&A*

**LEGISLATIVE RESEARCH COMMISSION**



**Kentucky  
Open Meetings  
and  
Open Records  
Laws**

*Statutes and Q&A*

*Compiled by*  
**Scott Varland**

**Legislative Research Commission**

September 2005

Paid for with state funds.  
Available in alternative form by request.



## **Foreword**

To provide the people with greater access to government, the 1974 Kentucky General Assembly passed the Open Meetings Law, which requires that public agencies open most of their meetings to the public. The 1976 Kentucky General Assembly then passed the Open Records Law, which requires that public agencies open most of their records to the public. Through various bills, the Kentucky General Assembly has amended the Open Meetings and Open Records Laws.

The Legislative Research Commission has authorized publication of this easy reference guide to help public agencies, the media, and the population at large understand their rights and responsibilities under the Open Meetings and Open Records Laws as amended.

Please discard the 2003 edition of this guide.

Robert Sherman  
Director

Legislative Research Commission  
Frankfort, Kentucky  
September 2005



# Contents

	<i>Page</i>
Foreword .....	iii
<b>KRS NO.</b>	
<b>Open Meetings of Public Agencies</b>	
<b>KRS 61.800 to 61.850 and 61.991</b>	
61.800 Legislative statement of policy. ....	1
61.805 Definitions for KRS 61.805 to 61.850. ..	1
61.810 Exceptions to open meetings. ....	3
61.815 Requirements for conducting closed sessions. ....	5
61.820 Schedule of regular meetings to be made available. ....	6
61.823 Special meetings. Emergency meetings. ..	6
61.826 Video teleconferencing of meetings. ....	8
61.835 Minutes to be recorded. Open to public. ....	9
61.840 Conditions for attendance. ....	9
61.846 Enforcement by administrative procedure. Appeal. ....	9
61.848 Enforcement by judicial action. De novo determination in appeal of Attorney General's decision. Voidability of action not substantially complying. Awards in willful violation actions. ....	12

**KRS NO.**

61.850 Construction. . . . . 13

**Open Records of Public Agencies**

**KRS 61.870 to 61.884, 61.991, 7.119, 26A.200,  
15.257, 171.223, 65.055, 160.395, and 164.465**

61.870 Definitions for KRS 61.872 to 61.884. . 15

61.871 Policy of KRS 61.870 to 61.884.  
Strict construction of exceptions  
of KRS 61.878. . . . . 18

61.8715 Legislative findings. . . . . 18

61.872 Right to inspection. Limitation. . . . . 19

61.874 Abstracts, memoranda, copies.  
Agency may prescribe fee.  
Use of nonexempt public records  
for commercial purposes.  
Online access. . . . . 21

61.8745 Damages recoverable by public agency  
for person's misuse of public records. . . 24

61.876 Agency to adopt rules and regulations. . 25

61.878 Certain public records exempted from  
inspection except on order of court —  
Restriction of state employees to  
inspect personnel files prohibited. . . . . 26



**KRS NO.**

61.880	Denial of inspection. Role of Attorney General. . . . .	33
61.882	Jurisdiction of Circuit Court in action seeking right of inspection. Burden of proof. Costs. Attorney fees. . . . .	36
61.884	Person's access to record relating to him.	37
61.991	Penalties. . . . .	37
7.119	Inspection of legislative records by public. Review of determination. . . . .	38
26A.200	Records to be property of Court of Justice — Supreme Court control. . . . .	39
15.257	Requirements for distribution of explanatory materials — Open Records and Open Meetings laws — Retention and management of public records. . . . .	40
171.223	Delivery to Attorney General of written information concerning retention and management of public records. . . . .	41
65.055	Duty of county judge/executives and mayors to distribute information to local officials and board members. . . . .	41
160.395	Duty of superintendents to distribute information to school board and school council members. . . . .	42

164.465	Duty of presidents of postsecondary education institutions to distribute information to university's governing board members. . . . .	43
	Open Meetings Questions & Answers . . . . .	45
	Open Records Questions & Answers . . . . .	53

## **Open Meetings of Public Agencies**

### **61.800 Legislative statement of policy.**

The General Assembly finds and declares that the basic policy of KRS 61.805 to 61.850 is that the formation of public policy is public business and shall not be conducted in secret and the exceptions provided for by KRS 61.810 or otherwise provided for by law shall be strictly construed.

### **61.805 Definitions for KRS 61.805 to 61.850.**

As used in KRS 61.805 to 61.850, unless the context otherwise requires:

(1) “Meeting” means all gatherings of every kind, including video teleconferences, regardless of where the meeting is held, and whether regular or special and informational or casual gatherings held in anticipation of or in conjunction with a regular or special meeting;

(2) “Public agency” means:

(a) Every state or local government board, commission, and authority;

(b) Every state or local legislative board, commission, and committee;

(c) Every county and city governing body, council, school district board, special district board, and municipal corporation;

(d) 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;

(e) Any body created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act in the legislative or executive branch of government;

(f) Any entity when the majority of its governing body is appointed by a “public agency” as defined in paragraph (a), (b), (c), (d), (e), (g), or (h) of this subsection, a member or employee of a “public agency,” a state or local officer, or any combination thereof;

(g) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff or a committee formed for the purpose of evaluating the qualifications of public agency employees, established, created, and controlled by a “public agency” as defined in paragraph (a), (b), (c), (d), (e), (f), or (h) of this subsection; and

(h) Any interagency body of two (2) or more public agencies where each “public agency” is defined in paragraph (a), (b), (c), (d), (e), (f), or (g) of this subsection;

(3) “Action taken” means a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body; and

(4) “Member” means a member of the governing body of the public agency and does not include employees or licensees of the agency.

(5) “Video teleconference” means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment.

### **61.810 Exceptions to open meetings.**

(1) All meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times, except for the following:

(a) Deliberations for decisions of the Kentucky Parole Board;

(b) Deliberations on the future acquisition or sale of real property by a public agency, but only when publicity would be likely to affect the value of a specific piece of property to be acquired for public use or sold by a public agency;

(c) Discussions of proposed or pending litigation against or on behalf of the public agency;

(d) Grand and petit jury sessions;

(e) Collective bargaining negotiations between public employers and their employees or their representatives;

(f) Discussions or hearings which might lead to the

appointment, discipline, or dismissal of an individual employee, member, or student without restricting that employee's, member's, or student's right to a public hearing if requested. This exception shall not be interpreted to permit discussion of general personnel matters in secret;

(g) Discussions between a public agency and a representative of a business entity and discussions concerning a specific proposal, if open discussions would jeopardize the siting, retention, expansion, or upgrading of the business;

(h) State and local cabinet meetings and executive cabinet meetings;

(i) Committees of the General Assembly other than standing committees;

(j) Deliberations of judicial or quasi-judicial bodies regarding individual adjudications or appointments, at which neither the person involved, his representatives, nor any other individual not a member of the agency's governing body or staff is present, but not including any meetings of planning commissions, zoning commissions, or boards of adjustment;

(k) Meetings which federal or state law specifically require to be conducted in privacy;

(l) Meetings which the Constitution provides shall be held in secret; and

(m) That portion of a meeting devoted to a discussion of a specific public record exempted from disclo-

sure under KRS 61.878(1)(m). However, that portion of any public agency meeting shall not be closed to a member of the Kentucky General Assembly.

(2) Any series of less than quorum meetings, where the members attending one (1) or more of the meetings collectively constitute at least a quorum of the members of the public agency and where the meetings are held for the purpose of avoiding the requirements of subsection (1) of this section, shall be subject to the requirements of subsection (1) of this section. Nothing in this subsection shall be construed to prohibit discussions between individual members where the purpose of the discussions is to educate the members on specific issues.

#### **61.815 Requirements for conducting closed sessions.**

(1) Except as provided in subsection (2) of this section, the following requirements shall be met as a condition for conducting closed sessions authorized by KRS 61.810:

(a) Notice shall be given in regular open meeting of the general nature of the business to be discussed in closed session, the reason for the closed session, and the specific provision of KRS 61.810 authorizing the closed session;

(b) Closed sessions may be held only after a motion is made and carried by a majority vote in open, public session;

(c) No final action may be taken at a closed session; and

(d) No matters may be discussed at a closed session other than those publicly announced prior to convening the closed session.

(2) Public agencies and activities of public agencies identified in paragraphs (a), (c), (d), (e), (f), but only so far as (f) relates to students, (g), (h), (i), (j), (k), (l), and (m) of subsection (1) of KRS 61.810 shall be excluded from the requirements of subsection (1) of this section.

### **61.820 Schedule of regular meetings to be made available.**

All meetings of all public agencies of this state, and any committees or subcommittees thereof, shall be held at specified times and places which are convenient to the public, and all public agencies shall provide for a schedule of regular meetings by ordinance, order, resolution, bylaws, or by whatever other means may be required for the conduct of business of that public agency. The schedule of regular meetings shall be made available to the public.

### **61.823 Special meetings. Emergency meetings.**

(1) Except as provided in subsection (5) of this section, special meetings shall be held in accordance with the provisions of subsections (2), (3), and (4) of this section.

(2) The presiding officer or a majority of the members of the public agency may call a special meeting.

(3) The public agency shall provide written notice of the special meeting. The notice shall consist of the date,



time, and place of the special meeting and the agenda. Discussions and action at the meeting shall be limited to items listed on the agenda in the notice.

(4) (a) As soon as possible, written notice shall be delivered personally, transmitted by facsimile machine, or mailed to every member of the public agency as well as each media organization which has filed a written request, including a mailing address, to receive notice of special meetings. The notice shall be calculated so that it shall be received at least twenty-four (24) hours before the special meeting. The public agency may periodically, but no more often than once in a calendar year, inform media organizations that they will have to submit a new written request or no longer receive written notice of special meetings until a new written request is filed.

(b) As soon as possible, written notice shall also be posted in a conspicuous place in the building where the special meeting will take place and in a conspicuous place in the building which houses the headquarters of the agency. The notice shall be calculated so that it shall be posted at least twenty-four (24) hours before the special meeting.

(5) In the case of an emergency which prevents compliance with subsections (3) and (4) of this section, this subsection shall govern a public agency's conduct of a special meeting. The special meeting shall be called pursuant to subsection (2) of this section. The public agency shall make a reasonable effort, under emergency circumstances, to notify the members of the agency, media or-

ganizations which have filed a written request pursuant to subsection (4)(a) of this section, and the public of the emergency meeting. At the beginning of the emergency meeting, the person chairing the meeting shall briefly describe for the record the emergency circumstances preventing compliance with subsections (3) and (4) of this section. These comments shall appear in the minutes. Discussions and action at the emergency meeting shall be limited to the emergency for which the meeting is called.

### **61.826 Video teleconferencing of meetings.**

(1) A public agency may conduct any meeting, other than a closed session, through video teleconference.

(2) Notice of a video teleconference shall comply with the requirements of KRS 61.820 or 61.823 as appropriate. In addition, the notice of a video teleconference shall:

(a) Clearly state that the meeting will be a video teleconference; and

(b) Precisely identify the video teleconference locations as well as which, if any, location is primary.

(3) The same procedures with regard to participation, distribution of materials, and other matters shall apply in all video teleconference locations.

(4) Any interruption in the video or audio broadcast of a video teleconference at any location shall result in the suspension of the video teleconference until the broadcast is restored.

### **61.835 Minutes to be recorded. Open to public.**

The minutes of action taken at every meeting of any such public agency, setting forth an accurate record of votes and actions at such meetings, shall be promptly recorded and such records shall be open to public inspection at reasonable times no later than immediately following the next meeting of the body.

### **61.840 Conditions for attendance.**

No condition other than those required for the maintenance of order shall apply to the attendance of any member of the public at any meeting of a public agency. No person may be required to identify himself in order to attend any such meeting. All agencies shall provide meeting room conditions which insofar as is feasible allow effective public observation of the public meetings. All agencies shall permit news media coverage, including but not limited to recording and broadcasting.

### **61.846 Enforcement by administrative procedure. Appeal.**

(1) If a person enforces KRS 61.805 to 61.850 pursuant to this section, he shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section. The person shall submit a written complaint to the presiding officer of the public agency suspected of the violation of KRS 61.805 to 61.850. The complaint shall state the circumstances which constitute an alleged violation of KRS 61.805 to 61.850 and shall state what the public agency should do to rem-

edy the alleged violation. The public agency shall determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of the complaint whether to remedy the alleged violation pursuant to the complaint and shall notify in writing the person making the complaint, within the three (3) day period, of its decision. If the public agency makes efforts to remedy the alleged violation pursuant to the complaint, efforts to remedy the alleged violation shall not be admissible as evidence of wrongdoing in an administrative or judicial proceeding. An agency's response denying, in whole or in part, the complaint's requirements for remedying the alleged violation shall include a statement of the specific statute or statutes supporting the public agency's denial and a brief explanation of how the statute or statutes apply. The response shall be issued by the presiding officer, or under his authority, and shall constitute final agency action.

(2) If a complaining party wishes the Attorney General to review a public agency's denial, the complaining party shall forward to the Attorney General a copy of the written complaint and a copy of the written denial within sixty (60) days from receipt by that party of the written denial. If the public agency refuses to provide a written denial, a complaining party shall provide a copy of the written complaint within sixty (60) days from the date the written complaint was submitted to the presiding officer of the public agency. The Attorney General shall review the complaint and denial and issue within ten (10) days, excepting Saturdays, Sundays, and legal holi-

days, a written decision which states whether the agency violated the provisions of KRS 61.805 to 61.850. In arriving at the decision, the Attorney General may request additional documentation from the agency. On the day that the Attorney General renders his decision, he shall mail a copy to the agency and a copy to the person who filed the complaint.

(3) (a) If a public agency agrees to remedy an alleged violation pursuant to subsection (1) of this section, and the person who submitted the written complaint pursuant to subsection (1) of this section believes that the agency's efforts in this regard are inadequate, the person may complain to the Attorney General.

(b) The person shall provide to the Attorney General:

1. The complaint submitted to the public agency;
2. The public agency's response; and
3. A written statement of how the public agency has failed to remedy the alleged violation.

(c) The adjudicatory process set forth in subsection (2) of this section shall govern as if the public agency had denied the original complaint.

(4) (a) A party shall have thirty (30) days from the day that the Attorney General renders his decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under KRS 61.848.

(b) If an appeal is not filed within the thirty (30)

day time limit, the Attorney General's decision, as to whether the agency violated the provisions of KRS 61.805 to 61.850, shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or where the alleged violation occurred.

(5) A public agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding enforcement of KRS 61.805 to 61.850.

**61.848 Enforcement by judicial action. De novo determination in appeal of Attorney General's decision. Voidability of action not substantially complying. Awards in willful violation actions.**

(1) The Circuit Court of the county where the public agency has its principal place of business or where the alleged violation occurred shall have jurisdiction to enforce the provisions of KRS 61.805 to 61.850, as they pertain to that public agency, by injunction or other appropriate order on application of any person.

(2) A person alleging a violation of the provisions of KRS 61.805 to 61.850 shall not have to exhaust his remedies under KRS 61.846 before filing suit in a Circuit Court. However, he shall file suit within sixty (60) days from his receipt of the written denial referred to in subsections (1) and (2) of KRS 61.846 or, if the public agency refuses to provide a written denial, within sixty (60) days from the date the written complaint was submitted to the presiding officer of the public agency.

(3) In an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to subsection (4)(a) of KRS 61.846, the court shall determine the matter de novo.

(4) Except as otherwise provided by law or rule of court, proceedings arising under this section take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.

(5) Any rule, resolution, regulation, ordinance, or other formal action of a public agency without substantial compliance with the requirements of KRS 61.810, 61.815, 61.820, and KRS 61.823 shall be voidable by a court of competent jurisdiction.

(6) Any person who prevails against any agency in any action in the courts regarding a violation of KRS 61.805 to 61.850, where the violation is found to be willful, may be awarded costs, including reasonable attorneys' fees, incurred in connection with the legal action. In addition, it shall be within the discretion of the court to award the person an amount not to exceed one hundred dollars (\$100) for each instance in which the court finds a violation. Attorneys' fees, costs, and awards under this subsection shall be paid by the agency responsible for the violation.

### **61.850 Construction.**

KRS 61.805 to 61.850 shall not be construed as repealing any of the laws of the Commonwealth relating to meetings but shall be held and construed as ancillary and supplemental thereto.





## **Open Records of Public Agencies**

### **61.870 Definitions for KRS 61.872 to 61.884.**

As used in KRS 61.872 to 61.884, unless the context requires otherwise:

(1) “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 derives at least twenty-five percent (25%) of its funds expended by it in the Com-

monwealth of Kentucky from state or local authority funds;

(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;

(2) “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;

(3) (a) “Software” means the program code which makes a computer system function, but does not include that

portion of the program code which contains public records exempted from inspection as provided by KRS 61.878 or specific addresses of files, passwords, access codes, user identifications, or any other mechanism for controlling the security or restricting access to public records in the public agency's computer system.

(b) "Software" consists of the operating system, application programs, procedures, routines, and subroutines such as translators and utility programs, but does not include that material which is prohibited from disclosure or copying by a license agreement between a public agency and an outside entity which supplied the material to the agency;

(4) (a) "Commercial purpose" means 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.

(b) "Commercial purpose" shall not include:

1. Publication or related use of a public record by a newspaper or periodical;

2. Use of a public record by a radio or television station in its news or other informational programs; or

3. Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties;

(5) "Official custodian" means the chief administrative

officer or any other officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control;

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

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

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

### **61.871 Policy of KRS 61.870 to 61.884. Strict construction of exceptions of KRS 61.878.**

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.

### **61.8715 Legislative findings.**

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 11.501 to 11.517, 45.253, 171.420, 186A.040, 186A.285, and 194A.146, 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.

**61.872 Right to inspection. Limitation.**

(1) All public records shall be open for inspection by any person, 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. No person shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.

(2) Any person shall have the right to inspect public records. The official custodian may require written application, signed by the applicant and with his name printed legibly on the application, describing the records to be inspected. The application shall be hand delivered, mailed, or sent via facsimile to the public agency.

(3) A person may inspect the public records:

(a) During the regular office hours of the public agency; or

(b) By receiving copies of the public records from the public agency through the mail. The public agency shall mail copies of the public records to a person whose residence or principal place of business is outside the county in which the public records are located after he precisely describes the public records which are readily available within the public agency. If the person requesting the public records requests that copies of the records be mailed, the official custodian shall mail the copies upon receipt of all fees and the cost of mailing.

(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.

(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 three (3) 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.

(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.

**61.874 Abstracts, memoranda, copies. Agency may prescribe fee. Use of nonexempt public records for commercial purposes. Online access.**

(1) Upon inspection, the applicant shall have the right to make abstracts of the public records and memoranda thereof, and to obtain copies of all public records not exempted by the terms of KRS 61.878. When copies are requested, the custodian may require a written request and advance payment of the prescribed fee, including postage where appropriate. If the applicant desires copies of public records other than written records, the custodian of the records shall duplicate the records or permit the applicant to duplicate the records; however, the custodian shall ensure that such duplication will not damage or alter the original records.

(2) (a) Nonexempt public records used for noncommercial purposes shall be available for copying in either standard electronic or standard hard copy format, as designated by the party requesting the records, where the agency currently maintains the records in electronic format. Nonexempt public records used for noncommercial purposes shall be copied in standard hard copy format where agencies currently maintain records in hard copy

format. Agencies are not required to convert hard copy format records to electronic formats.

(b) The minimum standard format in paper form shall be defined as not less than 8 1/2 inches x 11 inches in at least one (1) color on white paper, or for electronic format, in a flat file electronic American Standard Code for Information Interchange (ASCII) format. If the public agency maintains electronic public records in a format other than ASCII, and this format conforms to the requestor's requirements, the public record may be provided in this alternate electronic format for standard fees as specified by the public agency. Any request for a public record in a form other than the forms described in this section shall be considered a nonstandardized request.

(3) The public agency may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required. If a public agency is asked to produce a record in a nonstandardized format, or to tailor the format to meet the request of an individual or a group, the public agency may at its discretion provide the requested format and recover staff costs as well as any actual costs incurred.

(4) (a) Unless an enactment of the General Assembly prohibits the disclosure of public records to persons



who intend to use them for commercial purposes, if copies of nonexempt public records are requested for commercial purposes, the public agency may establish a reasonable fee.

(b) The public agency from which copies of nonexempt public records are requested for a commercial purpose may require a certified statement from the requestor stating the commercial purpose for which they shall be used, and may require the requestor to enter into a contract with the agency. The contract shall permit use of the public records for the stated commercial purpose for a specified fee.

(c) The fee provided for in subsection (a) of this section may be based on one or both of the following:

1. Cost to the public agency of media, mechanical processing, and staff required to produce a copy of the public record or records;

2. Cost to the public agency of the creation, purchase, or other acquisition of the public records.

(5) It shall be unlawful for a person to obtain a copy of any part of a public record for a:

(a) Commercial purpose, without stating the commercial purpose, if a certified statement from the requestor was required by the public agency pursuant to subsection (4)(b) of this section; or

(b) Commercial purpose, if the person uses or knowingly allows the use of the public record for a different commercial purpose; or

(c) Noncommercial purpose, if the person uses or knowingly allows the use of the public record for a commercial purpose. A newspaper, periodical, radio or television station shall not be held to have used or knowingly allowed the use of the public record for a commercial purpose merely because of its publication or broadcast, unless it has also given its express permission for that commercial use.

(6) Online access to public records in electronic form, as provided under this section, may be provided and made available at the discretion of the public agency. If a party wishes to access public records by electronic means and the public agency agrees to provide online access, a public agency may require that the party enter into a contract, license, or other agreement with the agency, and may charge fees for these agreements. Fees shall not exceed:

(a) The cost of physical connection to the system and reasonable cost of computer time access charges; and

(b) If the records are requested for a commercial purpose, a reasonable fee based on the factors set forth in subsection (4) of this section.

**61.8745 Damages recoverable by public agency for person's misuse of public records.**

A person who violates subsections (2) to (6) of KRS 61.874 shall be liable to the public agency from which the public records were obtained for damages in the

amount of:

- (1) Three (3) times the amount that would have been charged for the public record if the actual commercial purpose for which it was obtained or used had been stated;
- (2) Costs and reasonable attorney's fees; and
- (3) Any other penalty established by law.

**61.876 Agency to adopt rules and regulations.**

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

(a) The principal office of the public agency and its regular office hours;

(b) The title and address of the official custodian of the public agency's records;

(c) The fees, to the extent authorized by KRS 61.874 or other statute, charged for copies; and

(d) The procedures to be followed in requesting public records.

(2) Each public agency shall display a copy of its rules and regulations pertaining to public records in a promi-

ment location accessible to the public.

(3) The Finance and Administration Cabinet may promulgate uniform rules and regulations for all state administrative agencies.

**61.878 Certain public records exempted from inspection except on order of court — Restriction of state employees to inspect personnel files prohibited.**

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

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

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

(c) 1. Upon and after July 15, 1992, 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;

2. Upon and after July 15, 1992, 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:

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

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

c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or

d. For the grant or review of a license to do business.

3. The exemptions provided for in subparagraphs 1. and 2. of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;

(d) 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. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;

(e) Public records which are developed by an agency in conjunction with the regulation or supervision of financial institutions, including but not limited to, banks, savings and loan associations, and credit unions, which disclose the agency's internal examining or audit criteria and related analytical methods;

(f) 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. The law of eminent domain shall not be affected by this provision;

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again;

(h) 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 would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Un-

less exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, 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. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;

(i) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;

(j) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;

(k) All public records or information the disclosure of which is prohibited by federal law or regulation;

(l) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly;

(m) 1. 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 and limited to:

a. Criticality lists resulting from consequence assessments;

b. Vulnerability assessments;

c. Antiterrorism protective measures and plans;

d. Counterterrorism measures and plans;

e. Security and response needs assessments;

f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;

g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency; and

h. Records when their disclosure will expose a vulnerability referred to in this subparagraph and that describe the exact physical location of hazardous chemical, radiological, or biological materials.



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

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

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

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

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

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

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

(n) Public or private records, including books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, having historic, literary, artistic, or commemorative value accepted by the

archivist of a public university, museum, or government depository from a donor or depositor other than a public agency. This exemption shall apply to the extent that nondisclosure is requested in writing by the donor or depositor of such records, but shall not apply to records the disclosure or publication of which is mandated by another statute or by federal law.

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

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

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

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

### **61.880 Denial of inspection. Role of Attorney General.**

(1) If a person enforces KRS 61.870 to 61.884 pursuant to this section, he shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section. Each public agency, upon any request for records made under KRS 61.870 to 61.884, shall determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the three (3) day period, of its decision. An agency response denying, in whole or in part, inspection of any record 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. The response shall be issued by the official custodian or under his authority, and it shall constitute final agency action.

(2) (a) If a complaining party wishes the Attorney General to review a public agency's denial of a request to inspect a public record, the complaining party shall for-

ward to the Attorney General a copy of the written request and a copy of the written response denying inspection. If the public agency refuses to provide a written response, a complaining party shall provide a copy of the written request. The Attorney General shall review the request and denial and issue within twenty (20) days, excepting Saturdays, Sundays, and legal holidays, a written decision stating whether the agency violated provisions of KRS 61.870 to 61.884.

(b) In unusual circumstances, the Attorney General may extend the twenty (20) day time limit by sending written notice to the complaining party and a copy to the denying agency, setting forth the reasons for the extension, and the day on which a decision is expected to be issued, which shall not exceed an additional thirty (30) work days, excepting Saturdays, Sundays, and legal holidays. As used in this section, “unusual circumstances” means, but only to the extent reasonably necessary to the proper resolution of an appeal:

1. The need to obtain additional documentation from the agency or a copy of the records involved;
2. The need to conduct extensive research on issues of first impression; or
3. An unmanageable increase in the number of appeals received by the Attorney General.

(c) On the day that the Attorney General renders his decision, he shall mail a copy to the agency and a copy to the person who requested the record in question. The burden of proof in sustaining the action shall

rest with the agency, and the Attorney General may request additional documentation from the agency for substantiation. The Attorney General may also request a copy of the records involved but they shall not be disclosed.

(3) Each agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding the enforcement of KRS 61.870 to 61.884. The Attorney General shall not, however, be named as a party in any Circuit Court actions regarding the enforcement of KRS 61.870 to 61.884, nor shall he have any duty to defend his decision in Circuit Court or any subsequent proceedings.

(4) If a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees or the misdirection of the applicant, the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.

(5) (a) A party shall have thirty (30) days from the day that the Attorney General renders his decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under KRS 61.882.

(b) If an appeal is not filed within the thirty (30) day time limit, the Attorney General's decision shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has

its principal place of business or the Circuit Court of the county where the public record is maintained.

**61.882 Jurisdiction of Circuit Court in action seeking right of inspection. Burden of proof. Costs. Attorney fees.**

(1) The Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained shall have jurisdiction to enforce the provisions of KRS 61.870 to 61.884, by injunction or other appropriate order on application of any person.

(2) A person alleging a violation of the provisions of KRS 61.870 to 61.884 shall not have to exhaust his remedies under KRS 61.880 before filing suit in a Circuit Court.

(3) In an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the court shall determine the matter de novo. In an original action or an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the burden of proof shall be on the public agency. The court on its own motion, or on motion of either of the parties, may view the records in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(4) Except as otherwise provided by law or rule of court, proceedings arising under this section take precedence

on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.

(5) Any person who prevails against any agency in any action in the courts regarding a violation of KRS 61.870 to 61.884 may, upon a finding that the records were willfully withheld in violation of KRS 61.870 to 61.884, be awarded costs, including reasonable attorney's fees, incurred in connection with the legal action. If such person prevails in part, the court may in its discretion award him costs or an appropriate portion thereof. In addition, it shall be within the discretion of the court to award the person an amount not to exceed twenty-five dollars (\$25) for each day that he was denied the right to inspect or copy said public record. Attorney's fees, costs, and awards under this subsection shall be paid by the agency that the court determines is responsible for the violation.

#### **61.884 Person's access to record relating to him.**

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.

#### **61.991 Penalties.**

(1) Any person who knowingly attends a meeting of any public agency covered by KRS 61.805 to 61.850 of which he is a member, not held in accordance with the provisions of KRS 61.805 to 61.850 shall be punished by a fine of not more than one hundred dollars (\$100).

(2) (a) Any official of a public agency who willfully conceals or destroys any record with the intent to violate KRS 61.870 to 61.884 shall be guilty of a Class A misdemeanor for each separate violation.

(b) Any official of a public agency who fails to produce any record after entry of final judgment directing that such records shall be produced shall be guilty of contempt.

(3) Any person who violates any of the provisions of KRS 61.900 to 61.930 shall be fined not more than two hundred fifty dollars (\$250) or imprisoned not more than ninety (90) days, or both.

#### **7.119 Inspection of legislative records by public. Review of determination.**

(1) Records in the custody of the Legislative Research Commission or the General Assembly shall be available for distribution to the public, or open for inspection by any person.

(2) As used in subsection (1) of this section, “records” includes bills and amendments introduced in the Senate or House of Representatives, Senate and House Journals, Acts of the General Assembly, roll call votes, final reports of committees, Kentucky Administrative Regulations, documents showing salary and expenses paid to members of the General Assembly and all employees of the legislative branch, contracts, receipts and work orders for repairs or renovations to legislative offices or facilities, items cataloged in the legislative library, the Legislative Record, and informational and educational



materials offered by the public information office, including legislative videotapes and photographs, calendars, and meeting notices.

(3) Requests for records or other documents in the custody of the Legislative Research Commission or the General Assembly shall be directed to the director of the Legislative Research Commission. Except for KRS 61.880(3), provisions of the Open Records Act, KRS 61.870 to 61.884, shall apply to a request for inspection or copies of documents or other items not set forth in subsection (2) of this section, and except that a request for a review under KRS 61.880 of any determination by the director shall be made to the Legislative Research Commission, which shall issue its decision within thirty (30) days. If the Legislative Research Commission does not issue its decision on a review of the director's determination within thirty (30) days of submission to it of the matter, the director's determination may be appealed to the Franklin Circuit Court within sixty (60) days of its issuance. For purposes of this subsection, any reference to the Attorney General in KRS 61.880 and 61.882 shall be read as the Legislative Research Commission.

### **26A.200 Records to be property of Court of Justice— Supreme Court control.**

(1) All records, as defined in KRS 171.410(1), which are made by or generated for or received by any agency of the Court of Justice, or by any other court or agency or officer responsible to such court created under the present Constitution, or a former Constitution, whether

pursuant to statute, regulation, court rule, or local ordinance shall be the property of the Court of Justice and are subject to the control of the Supreme Court.

(2) The Supreme Court shall determine which records were generated, made, or received by or for any court.

**15.257 Requirements for distribution of explanatory materials — Open Records and Open Meetings laws — Retention and management of public records.**

(1) The Office of the Attorney General shall, within ninety (90) days of June 20, 2005, and thereafter, within ninety (90) days of the effective date of any legislation amending the provisions of the Open Meetings Act or the Open Records Act, distribute to all county judge/executives, mayors, county attorneys, city attorneys, superintendents of public school districts, presidents of each of the state public postsecondary education institutions identified in KRS 161.220(4)(b) or 164.001(12) or (16), and attorneys of public school districts and public postsecondary education institutions throughout Kentucky written information prepared by the Office of the Attorney General that explains the procedural and substantive provisions of the Open Meetings Act, KRS 61.805 to 61.850, and the Open Records Act, KRS 61.870 to 61.884, together with the information required by KRS 171.223 to be prepared by the Department for Libraries and Archives concerning proper retention and management of public records. This distribution may be by electronic means.

(2) All superintendents of public school districts and the presidents of each of the state public postsecondary education institutions identified in KRS 161.220(4)(b) or 164.001(12) or (16) shall be responsible for designating and submitting the names and addresses of the attorneys to whom this information shall be disseminated to the Office of the Attorney General.

**171.223 Delivery to Attorney General of written information concerning retention and management of public records.**

The Department for Libraries and Archives shall, within sixty (60) days of June 20, 2005, and thereafter, within sixty (60) days of the effective date of any legislation amending the provisions of the Open Meetings Act, KRS 61.805 to 61.850, or the Open Records Act, KRS 61.870 to 61.884, deliver to the Office of the Attorney General written information that explains proper retention and management of public records, which information shall be included in the Office of the Attorney General's distributions as specified in KRS 15.257.

**65.055 Duty of county judge/executives and mayors to distribute information to local officials and board members.**

(1) County judge/executives and mayors, or their respective designees, shall distribute the written information provided by the Office of the Attorney General and the Department for Libraries and Archives under KRS 15.257 and 171.223 to each elected official and each

member, whether elected or appointed, of every county and city legislative body, local government board, commission, authority, and committee, including boards of special districts, located within their respective jurisdictions. In the case of a board, commission, or authority created by joint action of a county or city, the county judge/executive and mayor, or their respective designees, shall distribute the written information to the members appointed by their respective jurisdictions. Distribution shall be accomplished within sixty (60) days of receiving the written information from the Office of the Attorney General and the Department for Libraries and Archives. Distribution to newly elected or appointed members shall be accomplished within sixty (60) days of their election or appointment. The distribution may be by electronic means.

(2) County judge/executives and mayors shall require signatory proof that each person identified in subsection (1) of this section has received the written information, shall maintain documentation of receipt on file, and shall certify to the Office of the Attorney General that the written information has been distributed as required.

**160.395 Duty of superintendents to distribute information to school board and school council members.**

(1) Superintendents of public school districts shall distribute the written information provided by the Office of the Attorney General and the Department for Libraries and Archives under KRS 15.257 and 171.223 to each

elected school board member and each school council member, as designated in KRS 160.345(2), within their respective districts. Distribution shall be accomplished within sixty (60) days of receiving the written information from the Office of the Attorney General and the Department for Libraries and Archives. Distribution to newly elected or appointed members shall be accomplished within sixty (60) days of their election or appointment. The distribution may be by electronic means.

(2) Superintendents shall require signatory proof that each school board member and school council member has received the written information as required under subsection (1) of this section, shall maintain documentation of receipt on file, and shall certify to the Office of the Attorney General that the written information has been distributed as required.

**164.465 Duty of presidents of postsecondary education institutions to distribute information to university's governing board members.**

(1) The presidents of state postsecondary education institutions identified in KRS 161.220(4)(b) or 164.001(12) or (16) shall distribute the written information provided by the Office of the Attorney General and the Department for Libraries and Archives under KRS 15.257 and 171.223 to each board of regents or governing board member of their university. Distribution shall be accomplished within sixty (60) days of receiving the written information from the Office of the Attorney

General and the Department for Libraries and Archives. Distribution to newly appointed members shall be accomplished within sixty (60) days of their appointment. The distribution may be by electronic means.

(2) The presidents of state public postsecondary education institutions, as identified in subsection (1) of this section, shall require signatory proof that each board of regents or governing board member has received the written information as required under subsection (1) of this section, shall maintain documentation of receipt on file, and shall certify to the Office of the Attorney General that the written information has been distributed as required.

# Open Meetings *Questions & Answers*

*Page*

## 1. **What is the basic policy of the Open Meetings Law?**

The basic policy is that the formation of public policy is public business and will not be conducted in secret. Therefore, the exceptions to the Open Meetings Law provided for by **KRS 61.810**, or otherwise provided for by law, will be narrowly, rather than broadly, construed.

**KRS 61.800**. . . . . 1

## 2. **What is a public agency under the Open Meetings Law?**

**KRS 61.805(2)** lists entities considered public agencies subject to the Open Meetings Law. Please note that when a public agency establishes, creates, and controls a subcommittee, ad hoc committee, or advisory committee, then that subcommittee, ad hoc committee, or advisory committee is considered a public agency subject to the Open Meetings Law. **KRS 61.805 (2)** . . . . . 1-2

## 3. **When is a meeting subject to the Open Meetings Law?**

A meeting subject to the Open Meetings Law occurs under either of two sets of circumstances. Under the first set of circumstances, a quorum of the “members” of

a public agency “meet.” At the meeting of the quorum of the members, public business is discussed or “action is taken” by the public agency. **KRS 61.810(1)**. “Member” means a member of the governing body of the public agency and does not include employees or licensees of the agency. **KRS 61.805(4)**. “Meeting” means all gatherings of every kind, including video teleconferences, regardless of where the meeting is held, whether it is a regular or special meeting, or whether it is an informational or casual gathering held in anticipation of or in conjunction with a regular or special meeting. **KRS 61.805(1)**. “Action taken” means a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body. **KRS 61.805(3)**). The second set of circumstances occurs as follows. When a public agency attempts to avoid the requirements of the Open Meetings Law by holding a series of less than quorum meetings, where the members attending one or more of the meetings collectively constitute at least a quorum of the members of the public agency, then each meeting shall be subject to the Open Meetings Law. **KRS 61.810(2)**. For example, a city council wants to avoid the requirements of the Open Meetings Law. The seven council members are Janice, Fred, Bob, Bill, Zeke, Zeda, and Alma, and a meeting of four members constitutes a quorum. In private, Janice and Fred meet to take action on an issue. Janice then meets with Bob and Bill in private, and they agree with the action taken. Bill then meets with Zeke and Zeda in private, and they agree with the



action taken. Zeda then meets with Alma in private, and she agrees with the action taken. The seven members then hold a public meeting and vote in support of the action taken. Even though less than a quorum of the members attended each private meeting, each meeting was held in violation of the Open Meetings Law. However, if the private meetings had consisted of discussions between individual members, where the purpose of the discussions was to educate members on specific issues, then there would have been no violation of the Open Meetings Law. **KRS 61.810(2)** . . . . . 1-4

**4. May a public agency use a video teleconference to comply with the requirements of the Open Meetings Law?**

When individuals see and hear each other by means of video and audio equipment and statutory requirements are followed, a public agency may meet through video teleconference. **KRS 61.805(1)** and **(5)** and **KRS 61.826** . . . . . 1, 3, 8

**5. How should public agency regular meetings be called and conducted?**

Regular meetings of public agencies will be held at specified times and places that are convenient to the public. All public agencies will make available to the public a schedule of regular meetings. **KRS 61.820**. In conducting a regular meeting, a public agency must provide meeting room conditions that, insofar as is feasible, allow effective public observation of the meeting. A public agency will have a person removed from a regular

meeting only to maintain order. No person will have to identify himself or herself in order to attend a regular meeting. The media must not be excluded from regular meetings. **KRS 61.840.** A public agency must keep minutes of every regular meeting. The minutes must reflect action taken at the meeting. Minutes will be open for public inspection no later than immediately following the next meeting of the public agency.

**KRS 61.835.** . . . . . 6, 8, 9

## **6. How should public agency special and emergency meetings be called and conducted?**

A public agency may hold a special meeting, not on the schedule of regular meetings, but only after giving proper notice of the special meeting to public agency members, the media, and the public at least 24 hours prior to the special meeting. **KRS 61.823(1),(2),(3), and (4).** Discussions and action at the meeting will be limited to items listed on the agenda in the notice. **KRS 61.823(3).** If an emergency prevents giving proper notice to the public agency members, the media, and the public at least 24 hours prior to a special meeting, then a public agency may hold an emergency meeting after making a reasonable effort, under emergency circumstances, to notify public agency members, the media, and the public of the emergency meeting. Discussions and action at the emergency meeting must be limited to the emergency for which the meeting is called. At the beginning of the emergency meeting, the person chairing the meeting will briefly describe for the record the emergency requir-

ing the calling of the emergency meeting. **KRS 61.823(5)**. In conducting a special or an emergency meeting, a public agency must provide meeting room conditions that, insofar as is feasible, allow effective public observation of the meeting. A public agency will have a person removed from a special or an emergency meeting only to maintain order. No person will have to identify himself or herself in order to attend a special or an emergency meeting. The media will not be excluded from a special or an emergency meeting. **KRS 61.840**.

A public agency must keep minutes of every special and emergency meeting it calls. The minutes will reflect action taken at the meeting. Minutes must be open for public inspection no later than immediately following the next meeting of the public agency.

**KRS 61.835**. . . . . 6-9

**7. May a public agency ever close a meeting to the public?**

Yes. A list of exceptions to the Open Meetings Law is found at **KRS 61.810(1) (a), (b), (c), (d), (e), (f), (g) (h), (i), (j), (k), (l), and (m)**. . . . . 3-5

**8. How should a public agency closed meeting be called and conducted?**

**KRS 61.815(1)** establishes the procedure for calling and conducting a closed meeting. Please note that no final action may be taken at a closed meeting. **KRS 61.815(1)(c)**. Note: **KRS 61.815(2)** exempts a public agency from having to comply with the **KRS 61.815(1)**

procedure when the closed meeting is authorized according to **KRS 61.810(1)(a), (c), (d), (e), (f)**, but only so far as **(f)** relates to students, **(g), (h), (i), (j), (k), (l), and (m)**. . . . . 3-6

## 9. How does a person enforce the Open Meetings Law?

To enforce the Open Meetings Law, a person should carefully read **KRS 61.846** and **61.848**. These sections of the law provide the enforcement procedure. If a person does not comply with all aspects of the enforcement procedure, he or she may lose the right to enforce the Open Meetings Law. **The outline of the enforcement procedure provided below is only an outline. Sole reliance on it may jeopardize your rights under the law.** A person has three methods for enforcing the Open Meetings Law. **KRS 61.846** and **61.848**.

First, a person may ask a public agency to remedy an alleged violation. **KRS 61.846(1)**. If the public agency agrees to remedy the alleged violation, but the person believes that the agency's efforts are inadequate, then the person may ask the Attorney General to render a decision on the complaint. **KRS 61.846(3)**. This decision will have the force and effect of law. **KRS 61.846(4)(b)**. A party may appeal the Attorney General's decision in Circuit Court. **KRS 61.846(4)** and **61.848**. If a public agency refuses to remedy an alleged violation, a person may ask the Attorney General to render a decision on the complaint. **KRS 61.846(2)**. This decision will have the force and effect of law. **KRS 61.846(4)(b)**.

A party may appeal the Attorney General's decision in Circuit Court. **KRS 61.846(4)** and **61.848**.

Second, a person may begin the first enforcement method stated above but then break off from the method to enforce the Open Meetings Law in Circuit Court. **KRS 61.848(2)**.

Third, a person may ignore the first and second enforcement methods stated above and go directly to Circuit Court to enforce the Open Meetings Law.

**KRS 61.848**. . . . . 9-12

**10. If a person succeeds in enforcing the Open Meetings Law through court action, may he or she receive court costs?**

Yes, under certain circumstances. **KRS 61.848(6)**. If the court determines that the public agency willfully violated the Open Meetings Law, the court may award the person costs, including reasonable attorney's fees, incurred in connection with the court action. In addition, a court will have the discretion to award the person an amount not to exceed \$100 for each instance in which the court finds a violation. . . . . 3-6

**11. Will the Attorney General continue to issue advisory Attorney General's opinions on the Open Meetings Law to public officials and the public at large?**

Yes. **KRS 15.020** and **15.025** and regulations **40 KAR 1:010** and **40 KAR 1:020**. To seek an advisory Attorney General's opinion, an individual should call the Office of

the Attorney General at (502) 696-5300 or write the Office of the Attorney General, State Capitol, 700 Capitol Avenue, Frankfort, Kentucky, 40601.

**12. Is there a criminal penalty for violating the Open Meetings Law?**

Yes. **KRS 61.991(1)**. Any member of a public agency who attends a public agency meeting knowing that it is not being held in accordance with the provisions of **KRS 61.805 to 61.850** will be fined not more than \$100. . . . . 1, 13, 35

**13. How do I obtain another copy of this guide?**

Call the Legislative Research Commission at (502) 564-8100 and ask to speak with someone in publications.

# **Open Records**

## *Questions & Answers*

*Page*

**1. What is the basic policy of the Open Records Law?**

The basic policy is that the free and open examination of public records is in the public interest. Therefore, the exceptions to the Open Records Law provided for by **KRS 61.878**, or otherwise provided for by law, will be narrowly, rather than broadly, construed.

**KRS 61.871.** . . . . . 18, 26

**2. What is a public agency under the Open Records Law?**

**KRS 61.870(1)** lists entities considered public agencies subject to the Open Records Law. Please note that when a public agency establishes, creates, and controls a subcommittee, ad hoc committee, or advisory committee, that subcommittee, ad hoc committee, or advisory committee is considered a public agency subject to the Open Records Law.

**KRS 61.870 (1)(j)** . . . . . 15, 16

**3. Is a private entity ever considered a public agency subject to the Open Records Law?**

Yes, when a private entity derives from state or local authority at least 25 percent of the funds that the private entity spends in the Commonwealth of Kentucky,

that entity is considered a public agency subject to the Open Records Law. **KRS 61.870(1)(h)**. However, not all records relating to the private entity must be open to the public. Private entity records will not be open to the public when the records are owned or maintained by or for the private entity and are not related to functions, activities, programs, or operations funded by state or local authority. **KRS 61.870(2)** . . . . . 15-16

**4. What is a public record subject to the requirements of the Open Records Law?**

For the purposes of the Open Records Law, public record includes 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.

**KRS 61.870(2)**. . . . . 16

**5. What is the procedure for a person to inspect a public record?**

A person may inspect a public record in either of two ways. First, a person may inspect a public record during the regular office hours of a public agency. Second, if a person's residence or principal place of business is outside the county in which the public record is located, a public agency will mail that person a copy of the public record after he or she precisely describes the public record that is readily available within the public agency.

**KRS 61.872(3)**. . . . . 20



**6. Does a person have a right to obtain a copy of a public record?**

Yes. A person may obtain a copy of a public record where the public record is located during regular office hours, or if that person's residence or principal place of business is outside the county in which the public record is located, a public agency will mail that person a copy of the public record after he or she precisely describes the public record that is readily available within the public agency. **KRS 61.872(3)** and **61.874**. However, before providing a person with a copy of a public record, a public agency may require a written request and advance payment of a reasonable fee, including postage, when a copy is mailed. **KRS 61.874(1)** . . . . . 20, 21

**7. When a public agency provides a copy of a public record for a noncommercial purpose, the public record will be provided in what format?**

If a public agency maintains a public record in electronic format, that record, requested for a noncommercial purpose, must be available for copying in either standard electronic or standard hard copy format. **KRS 61.874(2)(a)** and **(b)**. If the record is maintained in hard copy format, that record, requested for a noncommercial purpose, will be available for copying in a standard hard copy format. **KRS 61.874(2)(a)** and **(b)**. A public agency will not have to convert a hard copy format record to an electronic format. **KRS 61.874(2)(a)**. . . . . 21-22

**8. When a public agency provides a copy of a public record, how does that agency determine the reasonable fee for the copy?**

If the record is requested for a noncommercial purpose in a standardized format, the public agency will charge a reasonable fee that must not exceed the actual cost of reproduction, including the cost of media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required. **KRS 61.874(3)**. However, if the record is requested for a noncommercial purpose in a nonstandardized format, the public agency may, at its discretion, provide the requested format and recover staff costs as well as any actual costs incurred. **KRS 61.874(3)**.

If the record is requested for a commercial purpose, the public agency may establish a reasonable fee. **KRS 61.874(4)(a)**. To establish a reasonable fee, a public agency may require a certified statement from the requester stating the commercial purpose for which the record shall be used and may require the requester to enter into a contract with the agency. **KRS 61.874(4)(b)**. The contract will permit use of the public record for the stated commercial purpose for a specified fee. **KRS 61.874(4)(b)**. The fee may be based on one or both of the following: cost to the public agency for media, mechanical processing, and staff required to produce a copy of a public record; or cost to the public agency for the creation, purchase, or other acquisition of the public record. **KRS 61.874(4)(c)** . . . . . 22, 23

**9. May a public agency provide online access to its electronic public records?**

Yes. At its discretion, a public agency may provide online access to its electronic public records for a fee set forth at **KRS 61.874(6)** . . . . . 24

**10. May a public agency ever refuse to permit a person to inspect a public record on the basis that the request creates an unreasonable burden or that the request disrupts essential functions of the public agency?**

Yes. **KRS 61.872(6)**. However, for a court to uphold such a refusal, it must be sustained by clear and convincing evidence. . . . . 20

**11. Does a public agency have the discretion to prevent the inspection of certain records under the Open Records Law?**

Yes. **KRS 61.878** grants this discretion. A public agency will have the discretion to prevent the inspection of the types of public records listed at **KRS 61.878(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l)**. . .26-29

**12. When a public record contains statistical information not descriptive of any identifiable person, does a public agency have the discretion to prohibit inspection of the information pursuant to KRS 61.878(1)?**

No. **KRS 61.878(2)** . . . . . 26, 29

**13. Do the discretionary exemptions listed at KRS 61.878(1) apply when a public agency employee, including a university employee, an applicant for employment, or an eligible on a register wishes to inspect a public record that relates to that individual?**

No. **KRS 61.878(3)**. A public agency employee, including a university employee, an applicant for employment, or an eligible on a register, will have the right to inspect any public record, including preliminary and supporting documentation, that relates to that individual. However, such an individual will not have the right to inspect an examination or any document relating to ongoing criminal or administrative investigations by an agency. . . . . 26, 30

**14. If a public record contains information that a public agency may exempt from disclosure pursuant to KRS 61.878(1), as well as nonexempt information, how should a public agency respond to a request to inspect the public record?**

The public agency should black out the exempted information and make the nonexempted information available for inspection. **KRS 61.878(4)** . . . . . 26, 30

**15. Do the discretionary exemptions to the Open Records Law limit the exchange of public records or the sharing of information between public agencies?**

When the exchange or sharing is serving a legitimate governmental need or is necessary to the performance of

a legitimate governmental function, then there will be no prohibition to the exchange of public records or the sharing of information between public agencies. **KRS 61.878(5)**. . . . . 30

## 16. **How does a person enforce the Open Records Law?**

To enforce the Open Records Law, a person should carefully follow **KRS 61.880** and **61.882**. These sections of the law provide the enforcement procedure. If a person does not comply with all aspects of the enforcement procedure, he or she may lose the right to enforce the Open Records Law. **The outline of the enforcement procedure provided below is only an outline. Sole reliance on it may jeopardize your rights under the law.** A person has three methods for enforcing the Open Records Law. **KRS 61.880** and **61.882**.

First, a person may ask a public agency to permit him or her to inspect a public record. **KRS 61.880(1)**. If a public agency denies, in whole or in part, inspection of the public record, the complaining party may ask the Attorney General to review the public agency's denial of the request to inspect the public record and to render a decision on the complaint. **KRS 61.880(2)**. A party may appeal the Attorney General's decision in Circuit Court. **KRS 61.880(5)(a)**. If the appeal is not filed within 30 days, the Attorney General's decision will have the force and effect of law and will be enforceable in the Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the

county where the public record is maintained. **KRS 61.880(5)(b)**. If a person feels that the intent of the Open Records Law is being undercut by a public agency short of denial of inspection of a public record including, but not limited to, the imposition of excessive fees or the misdirection of the person, that person may complain in writing to the Attorney General, and the complaint will be subject to the same adjudicatory process as if inspection had been denied. **KRS 61.880(4)**.

Second, a person may begin the enforcement method described above but then break off from the method to enforce the Open Records Law in Circuit Court. **KRS 61.882(2)**.

Third, a person may ignore the first and second enforcement methods described above and go directly to Circuit Court to enforce the Open Records Law.

**KRS 61.882**. . . . . 30-34

**17. If a person succeeds in enforcing the Open Records Law through court action, may that person receive court costs?**

Yes, under certain circumstances. If the court determines that the public agency willfully withheld the public record in violation of the Open Records Law, the court may award the person costs, including reasonable attorney's fees, incurred in connection with the legal action. In addition, the court will have the discretion to award the person an amount not to exceed \$25 for each day he or she was denied the right to inspect the public record. **KRS 61.882(5)**. . . . . 34

**18. Will the Attorney General continue to issue advisory Attorney General’s opinions on the Open Records Law to public officials and the public at large?**

Yes. **KRS 15.020** and **15.025** and regulations **40 KAR 1:010** and **40 KAR 1:020**. To seek an advisory Attorney General’s opinion, an individual should call the office of the Attorney General at (502) 696-5300 or write the Office of the Attorney General, State Capitol, 700 Capital Avenue, Frankfort, Kentucky 40601.

**19. Is violation of the Open Records Law a criminal offense?**

Yes. **KRS 61.991(2)(a) and (b)** and **61.992**. Any public agency official who willfully conceals or destroys any record with the intent to violate the Open Records Law will be guilty of a Class A misdemeanor for each separate offense. **KRS 61.991(2)(a)**. Any public agency official who fails to produce any public record after entry of final judgment directing that such record must be produced will be guilty of contempt.

**KRS 61.991(2)(b)** . . . . . 35

**20. Is there a penalty that applies when a person obtains a copy of a public record under false pretenses?**

Yes. **KRS 61.8745**. When a person obtains a copy of a public record for a noncommercial purpose, he or she must not use that copy for a commercial purpose. When a person obtains a copy of a public record for a commer-

cial purpose, he or she must state the commercial purpose to the public agency and must not use that copy for another commercial purpose.

**KRS 61.874(5)** . . . . . 24

**21. How does the Open Records Law apply to the legislative and judicial branches of government?**

The processes are similar, but not identical, as each branch of government has developed its own records policies. The judicial branch policy is determined by the Administrative Office of the Courts and is designed to protect victims, jurors, juveniles, and others. The legislative branch policy is determined by the General Assembly and is designed to be as expansive as possible while protecting constituent-legislator communications. Documents mandated to be public are noted in **KRS 7.119**. Other documents can be requested from the LRC director, who is required to respond to such requests within three business days. Any request for records denied by the LRC director can be appealed to the full LRC, whose decisions can be appealed to the Franklin Circuit Court. Appeals of record requests denied by executive branch agencies are made to the Attorney General.

For judicial records, **KRS 26A.200** states that they are the property of the Court of Justice and are subject to the control of the Supreme Court. In the case of Ex parte Farley, Ky., 570 S.W.2d 617 (1978), the Kentucky Supreme Court decided that several sections of the Open Records Law did not apply to the Court of Justice. At-



torney General opinions issued after the date of the Ex parte Farley decision have held that the Open Records Law does not apply to any record in the custody of any agency of the Court of Justice. Those Attorney General opinions defer jurisdiction over judicial record appeals directly to the Chief Justice. KRS 26A.200 requires agencies in control of judicial records to comply with any official direction of the Chief Justice with regard to those records. Requests for judicial records should be made to the custodian with control over the record, such as the director of the Administrative Office of the Courts, the president of the Kentucky Bar Association, circuit clerks, the Clerk of the Court of Appeals, and the Clerk of the Supreme Court. Any appeal of a denial should be made to the Chief Justice of the Supreme Court. . . . . 38-40

**22. Are the Attorney General and other officials required to distribute Open Meetings and Open Records materials?**

Yes. By September 20, 2005, the Attorney General shall provide the Open Meetings Law and the Open Records Law, along with an explanation of these statutes, to government officials. The government officials are county judge/executives, mayors, county attorneys, city attorneys, superintendents of public school districts, presidents of state universities, and attorneys representing public school districts or state universities. The Attorney General will also provide these officials with the method for the proper retention and management of public records. The Attorney General will update the materials

in the future whenever the Open Meetings Law or Open Records Law is amended. Distribution of materials this year or later years may be by electronic means. **KRS 15.257(1)** and **KRS 171.223**.

Once a county judge/executive or a mayor receives Open Meetings and Open Records materials from the Attorney General, that county judge/executive or mayor, or a designee, is directed to distribute the materials. The materials shall be sent to various local government officials. Distribution shall be accomplished within 60 days of receiving the materials from the Attorney General. When an individual is newly elected or appointed to local government, distribution shall be accomplished within 60 days of the election or appointment. Distribution may be by electronic means. **KRS 65.055(1)**.

County judge/executives and mayors shall require that a person sign for Open Meetings and Open Records materials received from a county judge/executive or a mayor under **KRS 65.055(1)**. Furthermore, each county judge/executive and mayor shall certify to the Attorney General that Open Meetings and Open Records materials have been distributed as required. **KRS 65.055(2)**.

Superintendents of public school districts are directed to distribute the Open Meetings and Open Records materials received from the Attorney General to elected school board members and school council members. Superintendents shall follow the same distribution procedures as county judge/executives and mayors. **KRS 160.395**.

Presidents of state universities are directed to distribute the Open Meetings and Open Records materials received from the Attorney General to the members of the boards governing the state universities. The presidents shall follow the same distribution procedures as county judge/executives and mayors.

**KRS 164.465** . . . . . 40-44

**23. How do I obtain another copy of this guide?**

Call the Legislative Research Commission at (502) 564-8100 and ask to speak with someone in publications.

