

SECTION 2.8 Procedures for Requesting Public Records Relating to KRS 61.870
to 61.884

A. Initial Request with Immediate Inspection

- (1) Any person desiring to inspect or copy the public records of the county shall make a request or complete a written application for such records at the office of the County Judge/Executive during regular office hours, except during legal holidays. The application shall be hand delivered, mailed, electronically mailed (email) or sent via facsimile.(KRS 61.872 (2))
- (2) If the custodian determines that a person's request is in compliance with the open records law and the requested records are immediately available, the custodian shall deliver the records for inspection. Suitable facilities shall be made available in the office of the County Judge/Executive for the inspection. 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. (KRS 61.872(1))
- (3) An applicant may inspect public records during the regular business hours of the County, or by receiving copies of the public records from the County through the mail if the applicant's residence or principle place of business is outside of the county in which the County is located and he has precisely described public records which are available within the County. If the person requesting the public records requests that the records be mailed, the official custodian shall mail the copies upon receipt of all fees and the cost of mailing if applicable. (KRS 61.872(3))
- (4) The applicant shall have the right to make abstracts of the public records and to obtain copies of all public records not exempted by this policy. When copies are requested, the custodian may require a written request and advance payment of the prescribed fee if applicable.
- (5) Non-exempt public records used for non-commercial purposes shall be available for copying in either standard electronic or standard hard copy format, as designated by the party requesting the records. Agencies are not required to convert hard copy format records to electronic formats.
- (6) The minimum standard format in paper form shall be defined as not less than 8½ inches × 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 records 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 non-standardized request. (KRS 61.874(1)).
- (7) 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 non-exempt public records are requested for commercial purposes, the public agency may establish a reasonable fee. The public agency from which copies of non-exempt 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. The fee may be based on the cost to the public agency of media, mechanical processing and staff required to produce a copy of the public record or records or the cost to the public agency of the creation purchase, or the acquisition of the public records. (KRS 61.874 (4))

- (8) 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 (7) 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. Non-commercial 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. (KRS 61.874 (5))
 - d. 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:
 - (1) The cost of physical connection to the system and reasonable cost of computer time access charges;
 - (2) If the records are requested for a commercial purpose, a reasonable fee based on the factors set forth in subsection (7). (KRS 61.874(6))

B. Referral to Proper Custodian

If the County Judge/Executive does not have custody or control of the public record or records requested, the County Judge/Executive shall so notify the applicant and shall furnish the name and location of the custodian of the public record. (KRS 61.872(4))

C. Public Records Not Immediately Available

If the public record is in active use, in storage, or not otherwise available, the official custodian shall immediately so notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed three days (excepting Saturdays, Sundays, and legal holidays) 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 or duplication. (KRS 61.872(5))

D. Refusal of Unreasonable Requests

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 of public records. However, refusal under this section must be sustained by clear and convincing evidence. (KRS 61.872(6))

E. Time Limitation; Denial of Inspection

(1) The official custodian, upon any request for records made under this chapter, shall determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any request whether to comply with the request and shall notify in writing the person making the request within the three-day period of its decision. Any 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 the official custodian's authority and shall constitute final agency action. (KRS 61.880)

(1) If the requesting party wants the Attorney General to review the denial of a request for inspection of a public record, he shall proceed under the provisions of KRS 61.880 and 61.882. Upon the Attorney General's request, the agency will provide additional documentation.

(3) If upon request by the person seeking inspection, the Attorney General reviews the denial and issues a written opinion upholding, in whole or in part, the request for inspection, the requesting party may institute appeal proceedings within thirty (30) days for injunctive or declaratory relief in the circuit court. In addition, if the Attorney General disallows the request, or if the County continues to withhold the record notwithstanding the Attorney General's opinion, and the person seeking disclosure institutes proceedings in circuit court, the County shall notify the Attorney General of such action. (KRS 61.880, 61.882)

F. Concealing or Destroying Records Prohibited: No official or employee of the County shall willfully conceal or destroy any record with the intent to violate the provisions of this chapter or these rules and regulations.

G. Access to Records Relating to Particular Individual: 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 this chapter. (KRS 61.884)

H. Public Records Protected from Disclosure

- (1) The following public records are excluded from the application of this chapter and these rules and regulations, 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 other 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 opened 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 (i) in conjunction with an application or the administration of a loan or grant; (ii) in conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154; (iii) 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 (iv) for the grant or review of a license to do business. These exemptions shall not, however, apply to records the disclosure or publication of which is directed by other statutes.
 - 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 applications to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in division (subsection H, Item C (1.) above.
 - 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 or engineering or feasibility estimates and evaluations made by or for a public agency relative to the 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. Unless exempted by other provisions of this chapter, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action. The exemptions provided by this subdivision shall not be used by the custodian of the records to delay or impede the exercise of rights granted by this chapter.
 - i. Preliminary drafts, notes, or 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. Security and response needs assessments;
 - e. Infrastructure records that expose vulnerability referred to in this division 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, and ventilation, water, wastewater, sewage and gas systems.

- f. The following records when their disclosure will expose a vulnerability referred to in this division: 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
 - g. Records when their disclosure will expose vulnerability referred to in this division and that describe the exact physical location of hazardous chemical, radiological, or biological materials.
- (2) As used in this division, “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 division (e) 1. 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 division, 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 division shall affect the obligations of a public agency with respect to disclosure and availability of public records under state environmental, health, and safety programs;
- (1) The exemption established in this division shall not apply when a member of the Kentucky General Assembly seeks to inspect a public record identified in this division under the Open Records Law.
- 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 under this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person. In addition, if any public record contains material which is not excepted under this section, the County shall separate the excepted and make the non-excepted material available for examination, subject to the possible applicability of Section D.
- (3) 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.
- (4) No exemption under this section shall be construed to deny, abridge, or impede the right of a municipal employee, an applicant for employment, or an eligible person on an employment register to inspect and copy any record, including preliminary and other supporting documentation that relates to that person. Such 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 municipal employee, applicant, or eligible person on an employment register shall not have the right to inspect or copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency. (KRS 61.878)