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The Kentucky Open Records Act

In 1976, the General Assembly enacted the Open Records Act, KRS 61.870 to KRS 61.884, which establishes a right of access to public records. The General Assembly recognized that the free and open examination of public records is in the public interest. All public records, whether they are stored in a computer or on paper, must be open for inspection unless the records are exempted by one or more of the twelve exemptions found in the Act. You may inspect any nonexempt public record regardless of your identity.

What are public records?

The Open Records Act applies to public records maintained by State and Local government agencies. The agencies covered by the Act include:

- State and Local Government Officers, Departments, and Legislative bodies;
- County and City governing bodies, school district boards, special district boards and municipal corporations;
- State or Local Government agencies created by statute or other legislative acts;
- Agencies that receive at least 25% of their funds from State or Local authority;
- Agencies created and controlled by public agencies; and
- Interagency bodies of two or more public agencies.

Subject to twelve exceptions, records that are prepared, owned, used, possessed, or retained by a public agency are public records, and must be made available upon request.

What is the procedure for inspecting a public record?

To inspect a public record, you must make a written request to the official custodian of the records of the agency. The custodian is the agency employee who is responsible for maintaining the agency records. You should describe the records you want to inspect, sign the request, and print your name on it. You may hand deliver, mail, or fax your request to the agency.

If you request copies of public records, the agency's copying charges must be limited to the actual cost of reproduction, including materials and mechanical reproduction, but not including the cost of personnel required to copy the record.

The public agency must respond to your request, in writing, and within three days, not including Saturdays, Sundays, and legal holidays. If the agency denies all or any part of your request, it must tell you which Open Records Act exemption it is relying on. The agency must also explain how the exemption applies to the record.

If the record that you want to inspect is in use or temporarily unavailable, the agency should notify you and designate a place, time, and date for inspection no more than three days from the date it received your request. If the delay is greater than three days, the agency must give you a detailed explanation of the cause.

You may inspect public records during the regular office hours of a public agency, or by receiving copies of the records through the mail. If you live or work outside the County in which the records are located, and you precisely describe the records, the public agency must mail copies to you. The agency may require advance payment of the copying fee and postage.

In providing you with copies, the agency is not required to convert records from paper to electronic format, but is only required to give you what they have.

All public records shall be open for inspection by any resident of the Commonwealth, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No resident of the Commonwealth 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.

What records are exempt from public inspection?

The Open Records Act permits a public agency to withhold certain records from you unless you obtain a court order directing their release.

These include:

- Records containing information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy;
- Records that are confidentially disclosed to an agency or required by the agency to be disclosed to it which are generally recognized as confidential or proprietary and which if disclosed would permit an unfair commercial advantage to competitors, including records which are compiled and maintained in conjunction with an application for or the administration of a loan or grant; the application for or the regulation of assessments, incentives, inducements, or tax credits; or the regulation of a commercial enterprise;
- Records that relate to the prospective location of a business or industry which has not previously disclosed that it is interested in locating, relocating, or expanding in Kentucky;
- Records developed by an agency in conjunction with the regulation or supervision of financial institutions which reveal the agency's internal examining or audit criteria;
- Real estate appraisals, engineering or feasibility estimates, and evaluations made by or for a public agency in the course of acquiring property, until all of the property has been acquired;
- 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;
- Records of law enforcement agencies or agencies involved in administrative adjudication if disclosure of the records would harm the agency by premature release. Such records may be inspected after enforcement action is completed or a decision is made to take no action, unless they were compiled and maintained by a County or Commonwealth's Attorney or unless another exception applies;
- Preliminary documents, including drafts, notes, correspondence with private individuals, recommendations, and memoranda in which opinions are expressed or policies formulated; and
- Public records that are prohibited from disclosure by State or Federal Law.

What can you do if your request is denied?

If your request is denied, you may file an appeal with the Attorney General for review of the agency's actions. Your appeal must consist of a letter describing the circumstances of the denial, a copy of your written request, and a copy of the agency's written denial, if available. Unless you are an inmate confined in a jail or correctional facility who is aggrieved by a denial issued by the Corrections Cabinet, you may bypass the Attorney General's Office and file your appeal in Circuit Court. If you choose to go directly to Circuit Court, you will incur the costs of bringing a lawsuit, including filing fees and your attorney's fees. The Attorney General will review your appeal and issue a decision. The decision will state whether the agency violated the Open Records Act by denying your request. You will receive a copy of the decision along with the agency. You or the public agency may appeal the Attorney General's decision to the Circuit Court of the County where the agency has its principal place of business or where the record is maintained. The Attorney General should be notified of any Circuit Court action, but may not be named as a party in the action.

If an appeal is not filed within thirty days, the Attorney General's decision has the force and effect of law and can be enforced in Circuit Court. However, the Attorney General does not have authority to force an agency to release records or otherwise enforce the decision after it is issued.

If you prevail against an agency in Circuit Court, you may be awarded costs, including reasonable attorney fees, if the court finds that the records were willfully withheld. The court may also award you up to \$25 for each day that you were denied the right to inspect the records.

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

Requester's Contact Information.

Name:

Mailing Address:

E-mail Address (if applicable):

Records to be inspected:

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

This request is (choose one):

- NOT for a commercial purpose; or
- FOR a commercial purpose.

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

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

Signature:

Date:

The Office designates the following Records Custodian:

Name: Robbi Bentley

Title: City Clerk

Mailing Address: 243 Main Street Pikeville, KY 41501

Email Address: robbi.bentley@pikevilleky.gov

Responding to Records Requests

All requests for copies or review of public records in the custody of the Agency must be made in writing. A request may be sent electronically to the Record Custodian's email address identified above. Requests may also be mailed to the Agency or hand delivered to the Agency's mailing address identified above.