



KY COUNTY ATTORNEYS ASSOCIATION

Open Records/Meetings

FEBRUARY 20, 2025

Open Records Act

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

Kentucky General Assembly (1992)

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

Kentucky General Assembly (1994-2009)

What is a Record?



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

What is a Public Agency?



"Public agency" means:

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

Who can Request Records?



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

“Resident of the Commonwealth” means:

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

Publicly Post the Following:

1. The Principal Office/Office Hours;
2. Title and Address of the Official Custodian of the Records;
3. Fees;
4. Open Records Request Procedures; and
5. Any Other Matters.

Keep it Updated!

Written application may be required for inspection of documents:

- (A) Printed Name;
- (B) Signature; and
- (C) Records Description.

No specific application form required

The Attorney General Standardized Form recommended:

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

During regular office hours; or

Via Mail

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

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

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

Non-Commercial Purpose

\$0.10/page—County Clerk Exceptions

Tapes, Discs, Etc.—Cost of Reproduction

Postage

If Electronic Format with an Email Receipt Request—No Charge

Payment Prior to Production—Discretionary

Commercial Purpose

Agreement Required

Staff Time

Other Costs

Booking/Inmate Photo Exception (KRS 61.8746)

KRS 61.872(4,6)

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

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

KRS 61.872(5)/61.880(1)

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

KRS 61.880(1) Denials—Cite Exception & Applicability Explanation



FAILURE TO MEET THE FIVE DAYS REQUIREMENT

23-ORD-034

Day 7. No responsive records.

23-ORD-237

No response. No responsive records.

23-ORD-273

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

FAILURE TO CITE KRS 61.872(5)

22-ORD-295

Over 1,000 responsive documents requiring redaction.

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

23-ORD-013

Cited to KRS 61.872(5) inappropriately.

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

CUSTODIAN OF RECORDS

23-ORD-300

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

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

AN INDIVIDUAL'S PERSONAL RECORDS

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

- Don't deny without an exception!



FAILURE TO CITE APPLICABILITY OF KRS 61.878 EXCEPTIONS

Most Relevant Exceptions

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

FAILURE TO CITE APPLICABILITY OF KRS 61.878 EXCEPTIONS

Most Relevant Exceptions

- The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired.
- Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information 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. Potentially open after conclusion of the action.
 - ...records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action.
- Photographs or videos that depict the death, killing, rape, or sexual assault of a person.
 - Some exceptions.

FAILURE TO CITE APPLICABILITY OF KRS 61.878 EXCEPTIONS

Most Relevant Exceptions

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

FAILURE TO CITE APPLICABILITY OF KRS 61.878 EXCEPTIONS

Most Relevant Exceptions

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

Open Meetings Act

KY Open Meetings Act

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.

KY Open Meetings Act

- Definitions

- “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
- “Public Agency” means
 - State and local government boards, commissions, authorities, committees;
 - Bodies created by governmental entities, including executive authorities, or entities where a majority of the body is appointed by a public agency, a public agency member or officer
- “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
- Quorum means majority

KY Open Meetings Act

- Rule

- KRS 61.810(1) provides that "[a]ll 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[.]”

Lincoln Trail Grain Growers Ass'n v. Meade Cty. Fiscal Court, 632 S.W.3d 766, 774 (Ky. Ct. App. 2021)

- Educational opportunities are exempted
 - Conferences
 - Training sessions

- Violation

- A series of less than quorum meetings; and
- Held for the purpose of avoiding the Open Meetings requirements; and
- Resulting in at least a quorum participating

KY Open Meetings Act

- Regular Meetings

- 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.
- In considering locations for public meetings, the agency shall evaluate space requirements, seating capacity, and acoustics.
 - County
 - County seat is primary
 - Other locations in the county require a newspaper advertisement
- 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.
 - County--Executive Order—County Judge/Executive

KY Open Meetings Act

- Special Meetings/Emergency Meetings

- Called by presiding officer or a majority of the body
 - Fiscal court may only call a special meeting if the CJE rejects the special meeting request
- A specific agenda is required with dissemination/posting no later than 24 hours prior to the meeting
 - If a regular meeting is rescheduled, it becomes a special meeting and must meet special meeting requirements
- Emergency meetings are special meetings with additional requirements
 - Emergency exists preventing special meeting notice requirements
 - Called by CJE or a majority of the body
 - Reasonable effort to notify all members, qualified media and the public
 - Emergency must be described at the beginning of the meeting and needs to be reflected in the minutes
 - Discussion/action is limited to the emergency

92-OMD-1473

KY Open Meetings Act

- Video Teleconferences (VTC)

- Notice

- Comply with either the Regular Meeting schedule requirements or the Special Meeting requirements
 - Switching an in-person Regular Meeting to a VTC Regular Meeting requires compliance with special meeting notice requirements—Remains a Regular Meeting
 - Clearly state that it is a video teleconference Provide method for live public viewing (e.g. website address, Facebook Live...)
 - If a physical location is being provided, or if two or more members will be attending from the same location
 - Identify a primary physical location where the public may attend
 - All members must be able to be seen and heard

- The same procedures must apply in all VTC locations

- All members must remain visible at all times business is discussed

- Restroom break requires a pause in discussion

- An interruption in the VTC broadcast requires suspension until restored

KY Open Meetings Act

- Minutes
 - Counties
 - County Clerk has the right to serve as Fiscal Court Clerk
 - If County Clerk declines, Fiscal Court appointment
 - Votes and actions are required to be recorded
 - Must be available immediately following the next meeting

KY Open Meetings Act

- Conditions for Attendance

- Maintenance of order
 - Public may film/broadcast the meeting as long as creating a disturbance
- No sign-in requirement
 - No required public comment period—Sign-ins allowed for public comment
- Meeting rooms must allow for effective communication

However, Kentucky's Open Meetings Act does not impose upon government agencies the requirement to conduct business only in the most convenient locations at the most convenient times. The intent of the open meetings statutes is to ensure that government business is not conducted in secret, that the public is adequately notified of the time and nature of government proceedings, and that interested citizens be afforded the opportunity to participate in such proceedings. In short, the open meetings statutes are designed to prevent government bodies from conducting its business at such inconvenient times or locations as to effectively render public knowledge or participation impossible, not to require such agencies to seek out the most convenient time or location.

[Knox Cty. v. Hammons, 129 S.W.3d 839, 845 \(Ky. 2004\)](#)

KY Open Meetings Act

- Executive/Closed Session
 - A portion of the meeting where the public is excluded
 - Attendance is limited to the body members and those who can shed light on the topic
 - Legal counsel presence recommended
 - Secretary/clerk not required
 - No minutes
 - A KRS 61.810(1) exception is required
 - Exception topic discussion only
 - Straw polls allowed—OAG 82-341

KY Open Meetings Act

- Executive/Closed Session Process
 - Process
 - Motion In
 - Motion to go into Executive Session pursuant to KRS 61.810(1)(?) relating to (read or paraphrase the appropriate paragraph)
 - KRS 61.810(1) list is exclusive
 - Second
 - Vote
 - Motion Out
 - Motion to go back into open session
 - Second
 - Vote
 - Recommended to note that no action was taken in Executive Session

KY Open Meetings Act

- Select Open Meeting Exemptions

- (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
- (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

KY Open Meetings Act

- Select Open Meeting Exemptions
 - (k) Meetings which federal or state law specifically require to be conducted in privacy
 - (m) That portion of a meeting devoted to a discussion of a specific public record exempted from disclosure 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
 - (n) Meetings of any selection committee, evaluation committee, or other similar group established under KRS Chapter 45A or 56 or other state or local law, to select a successful bidder for award of a state or local contract

KY Open Meetings Act

- Enforcement

- Attorney General

- To agency presiding officer
 - Written complaint
 - Circumstances
 - Proposed remedy
 - Response within three business days
 - Public agency remedy
 - Denial
 - Statutory support
 - Explanation
 - Complaining party appeal to AG within 60 days of complaint or response
 - AG decision with 10 business days
 - 30 day Circuit Court appeal period

KY Open Meetings Act

- Enforcement

- Circuit Court

- Jurisdiction is the Circuit Court in which the agency is located
 - 60 days filing deadline (30 Day filing deadline if appealing an AG decision)
 - Written complaint to agency required (same as AG enforcement requirement) from
 - Date of denial or alleged inadequate response
 - Date of complaint if no response
 - Penalty
 - Agency actions may be voided
 - Costs, including attorney's fees
 - \$100 fine per instance

Contact Information



Richard J. Ornstein

Attorney

800.264.5226

rich.ornstein@kaco.org