

2019

Decisions of the Attorney General

Open Records

The following are brief summaries of Open Records Decisions issued by the Office of the Kentucky Attorney General. Decisions of the Attorney General may be appealed to the Kentucky Courts. Those decisions that are appealed to the Kentucky's appellate courts are captured in the regular case law summaries provided by this agency. Unless appealed, these Decisions carry the force of law in Kentucky and are binding on public agencies. A copy of the applicable Kentucky Revised Statutes can be found at the beginning of the summary. It is possible that one or more of these Decisions are being appealed; these cases will be reflected in the Quarterly Case Law Updates of this agency.

Note that some Decisions do not directly involve a public safety agency, but are included due to the principles discussed and their likely applicability in the future to such agencies.

These summaries are designed as a study and reference tool for officers in training classes. Although care has been taken to make these summaries as accurate as possible, official copies should be consulted when possible before taking any actions that may have legal consequences. For a full copy of any of the opinions summarized below, please visit <https://ag.ky.gov/Priorities/Government-Transparency/orom/Pages/default.aspx>.

The issues, arguments and summaries that appear in each summary are only the opinions of the compilers of the listed summary. They are only meant to be used for guidance, are not offered as legal opinions, and should not be relied upon or cited as legal authority for any action. Always consult legal counsel when in doubt about the meaning of a statute, court decision or Decision of the Attorney General.

KENTUCKY
Open Records Statutes
Updated through 2019

61.870 Definitions for KRS 61.872 to 61.884

(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, 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;

(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;

(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; and

(9) "Booking photograph and photographic record of inmate" means a photograph or image of an individual generated by law enforcement for identification purposes when the individual is booked into a detention facility as defined in KRS 520.010 or photograph and image of an inmate taken pursuant to KRS 196.099.

Effective: July 15, 2016

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.

Effective: July 14, 1992

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 [194B.102](#), 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](#).

Effective: June 25, 2009

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:

(a) 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.

(b) Facsimile transmission of the written application described in paragraph (a) of this subsection; or

(c) E-mail of the application described in paragraph (a) of this subsection.

(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.

Effective: June 27, 2019

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.

Effective: July 15, 1994

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.

Effective: July 15, 1994

61.8746 Commercial use of booking photographs or official inmate photographs prohibited -- Conditions -- Right of action -- Damages.

(1) A person shall not utilize a booking photograph or a photograph of an inmate taken pursuant to KRS 196.099 originally obtained from a public agency for a commercial purpose if:

- (a) The photograph will be placed in a publication or posted on a Web site; and
- (b) Removal of the photograph from the publication or Web site requires the payment of a fee or other consideration.

(2) Any person who has requested the removal of a booking photograph or photo taken pursuant to KRS 196.099 of himself or herself:

- (a) Which was subsequently placed in a publication or posted on a Web site; and
- (b) Whose removal requires the payment of a fee or other consideration;

shall have a right of action in Circuit Court by injunction or other appropriate order and may also recover costs and reasonable attorney's fees.

(3) At the court's discretion, any person found to have violated this section in an action brought under subsection (2) of this section, may be liable for damages for each separate violation violation, in an amount not less than:

- (a) One hundred (\$100) dollars a day for the first thirty (30) days;
- (b) Two hundred and fifty (\$250) dollars a day for the subsequent thirty (30) days; and
- (c) Five hundred (\$500) dollars a day for each day thereafter.

If a violation is continued for more than one (1) day, each day upon which the violation occurs or is continued shall be considered and constitute a separate violation.

Effective: July 15, 2016

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 insure 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;
- (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 prominent location accessible to the public.

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

History: Created 1976 Ky. Acts ch. 273, sec. 4.

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. Unless 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 Kentucky Office of Homeland Security 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.

(o) Records of a procurement process under KRS 45A or 56. This exemption shall not apply after:

1. A contract is awarded.
2. The procurement process is canceled without award of a contract and there is a determination that the contract will not be resolicited; and
- (p) Communications of a purely personal nature unrelated to any governmental function.

(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, lay-offs, 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.

Effective: June 27, 2019

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 forward 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.

Effective: July 15, 1994

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.

Effective: July 14, 1992

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](#).

History: Created 1976 Ky. Acts ch. 273, sec. 8.

**2019 OPINIONS OF THE ATTORNEY GENERAL
OPEN RECORDS
SELECTED SUMMARIES**

19-ORD-001

In re: Noel Mark Botts/Franklin County Sheriff's Office

Issue:

Whether or not the Franklin County Sheriff's Office violated KRS 61.880(1) in failing to issue a timely written response to request.

Argument:

The Franklin County Sheriff's Office and the Franklin County Attorney never issued a response to the request.

Summary:

The Franklin County Sheriff's Office violated KRS 61.880(1) in failing to issue a timely written response to request. The sheriff's office had two opportunities to fully discharge its duty under KRS 61.880(1); first, upon receipt of Mr. Botts' request, and second, upon receiving the Notification from the Attorney General's Office. A public agency such as the Sheriff's Office is not permitted to elect a course of inaction. *See* 17-ORD-129. The Attorney General has consistently recognized that procedural requirements of the Open Records Act "are not mere formalities, but are an essential part of the prompt and orderly processing of an open records request." 04-ORD-084, p. 3 (citing 93-ORD-125, p. 5); 05-ORD-190; 09-ORD-186; 12-ORD-085.

19-ORD-002

In re: Noel Botts/Kentucky State Police

Issue:

Whether Kentucky State Police ("KSP") violated the Open Records Act in its disposition of a request for records regarding citations for vehicles passing school busses that were loading or unloading.

Argument:

KSP advised there would be a delay in determining whether or not such records existed due to the storage location of the file. If the records were found to exist, KSP advised that the records would be forwarded to the requester.

Summary:

Kentucky State Police committed a procedural violation of the Open Records Act by failing to give a detailed explanation of the cause for delaying production of responsive records for one month.

19-ORD-005

In re: Bobby Duane Curtis/Powell County Sheriff's Office

Issue:

Whether the sheriff's office violated the Open Records Act by failing to issue a written response advising why the records were withheld and by failing to provide the name and location of the person with actual possession of the requested records.

Argument:

The sheriff's office did not have possession of some of the requested records.

Summary:

The sheriff's office elected to provide some copies during the appeal, but violated KRS 61.880(1) by failing to issue a written response that included "a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies" for records withheld. The sheriff's office violated KRS 61.872(4) by failing to provide the name and location of the person with actual possession of the requested records.

19-ORD-023

In re: Justin L. Knappick/Estill County Sheriff's Department and Estill County 911 Dispatch Center

Issue:

Whether or not requested documents are exempt due to an ongoing criminal investigation.

Argument:

The requested items are related to a pending investigation. Additionally, the items requested were not narrowly tailored to permit a reasonable response nor were many of the items requested within the control of either agency.

Summary:

The Estill County Sheriff's Department and the Estill County 911 Dispatch Center violated the Open Records Act in denying access to all documentation. Both agencies failed to show the harm that would result from premature disclosure of any records in their possession or custody; the mere fact a law enforcement action is pending does not render all existing responsive documentation categorically exempt under *City of Ft. Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842 (Ky. 2013).

19-ORD-049

In re: Shafi Khan/Kentucky State Police

Issue:

Whether the Kentucky State Police violated the Kentucky Open Records Act in denying inmate's request for a copy of his DNA test results.

Argument:

DNA test results are exempt from disclosure pursuant to KRS 17.175(4), KRS Chapter 61, and KRS 61.878(1)(l). Furthermore, the appeal of the decision of denial was outside of the required time to appeal a decision.

Summary:

Inmate requester failed to initiate his appeal within twenty (20) days after denial by Kentucky State Police of a request for a copy of his DNA test results and, in accordance with KRS 197.025(3), his appeal is consequently time-barred.

19-ORD-062

In re: Ann Nicole Henson/Lancaster Police Department

Issue:

Whether the Lancaster Police Department violated the Open Records Act in its disposition of a request for a copy of its policies and procedures manual and information regarding those policies and procedures.

Argument:

Printing cost will be charged because of the manpower required to copy each volume, price of materials and shipping.

Summary:

The Attorney General found that the agency subverted the intent of the Open Records Act short of denial of inspection by including staff time in cost for copying policies and procedures, but did not violate the Act by refusing to answer requests for information.

19-ORD-063

In re: WDRB News/Kentucky State Police

Issue:

Whether the Kentucky State Police violated the Open Records Act in denying WDRB News request for "access to and a copy of the following complete 'response to resistance' investigations.

Argument: “Response to Resistance” investigations are for administrative purposes only and are exempt from disclosure.

Summary: Kentucky State Police violated the Open Records Act in denying access to records contained in five Response to Resistance investigation files and one Internal Affairs investigation file pursuant to KRS 61.878(1)(i) and (j). Some of the records forfeited their preliminary characterization insofar as the final decision maker adopted those records by concurring with the findings and recommendations of the Internal Affairs Commander. Some witness statements that were not relied upon by the KSP Commissioner in making a final decision retained their preliminary character and were properly withheld under KRS 61.878(1)(i) and (j).

19-ORD-072 **In re: Johnny R. Phillips/Kentucky State Police**

Issue: Kentucky State Police properly denied access to requested DNA laboratory reports and underlying documentation.

Argument: The DNA laboratory reports, the underlying data, and the accompanying documentation are confidential and exempt from disclosure pursuant to KRS 17.175(4).

Summary: Kentucky State Police properly denied access to requested DNA laboratory reports and underlying documentation pursuant to KRS 17.175(4), incorporated into the Open Records Act per KRS 61.878(1)(l); the analysis in 03-ORD-126 and 14-ORD-085 is controlling.

19-ORD-090 **In re: Joshua Powell/Montgomery County Sheriff’s Office**

Issue: Whether the Montgomery County Sheriff’s Office violated the Open Records Act by denying a request for records.

Argument: The requested records are exempt because they are part of an ongoing investigation and the request was too broad.

Summary: The Montgomery County Sheriff's Office violated the Open Records Act by failing to carry its burden of proving the requested records were part of an ongoing investigation and also violated the Act by failing to respond, in part, to the request.

19-ORD-093 **In re: Joye Estes/Kentucky State Police**

Issue: Whether the Kentucky State Police violated the Open Records Act when it failed to timely and completely respond to a request for "any and all copies of NIBRS reports and citations" for KRS 525.125, KRS 525.130, and KRS 525.135. A partial response was provided approximately one month following the submission of the original request.

Argument: This request is moot because relevant records were ultimately provided.

Summary: Timeliness is a fundamental premise of the Open Records Act, underscored by the three-day agency response time codified at KRS 61.880(1). Public agencies must respond to open records requests within three working days and indicate if the request will be granted. KSP provided no statutory basis for the delay, thereby violating the timeliness requirement of the Act. The appeal is also not moot because the KSP provided a partial disclosure of records. A complaint is moot only if the requested documents are made available to the complaining party. From this opinion, the AG found that partial disclosure does not moot an Open Records appeal.

19-ORD-094 **In re: Joshua Powell/Radcliff Police Department**

Issue: Whether Radcliff Police Department violated the Open Records Act when it failed to respond to an open records request.

Argument: A response was never sent on behalf of the Radcliff Police Department.

Summary: The Radcliff Police Department's failure to respond to the open records request is equivalent to a denial of that request without specific support in the form of "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." KRS 61.880(1); 02-ORD-116

19-ORD-102

In re: Kellie Collins/Lexington Police Department

Issue: Whether the Lexington Police Department violated the Open Records Act in denying two open records requests for footage from a body camera.

Argument: The body camera footage could not be released pursuant to KRS 189A.100(2)(e) because the requested footage contained a depiction of field sobriety tests.

Summary: The Lexington Police Department properly withheld body camera footage of DUI field sobriety tests according to KRS 189A.100(2)(e). No exception exists for using this type of footage in civil litigation or insurance disputes. See 14-ORD-168. The requested records may only be used for the “official purposes” listed in 189A.100(2)(e), which do “not include use in the defense of a civil action” or other type of litigation.

19-ORD-105

In re: Gerry L. Calvert, II/Jessamine County Fire District

Issue: Whether the Jessamine County Fire District (“JCFD”) violated the Open Records Act (“Act”) in the disposition of a request for records.

Argument: The Fire District has no administrative staff to respond to open records requests nor does it have a policy or procedure with regard to such requests other than the KRS regarding open records.

Summary: In response to requests for multiple categories of records, Jessamine County Fire District violated the Open Records Act by: failing to adopt rules and regulations and designate an official custodian of its public records (KRS 61.876); failing to timely respond to request (KRS 61.880(1)); by improperly delaying access to public records (KRS 61.872(5)); by requiring onsite inspection of responsive records (KRS 61.872(3)); and by issuing a blanket denial for personnel records based on KRS 61.878(1)(a). JCFD properly denied request for records pertaining to ongoing disciplinary action as “preliminary” under KRS 61.878(1)(i) and (j) where final action had not yet been taken; JCPS was not required to provide copies of records that requester failed to precisely describe or to provide access to nonexistent records.

19-ORD-116

In re: Joshua Powell/Radcliff Police Department

Summary:

Whether the Radcliff Police Department violated the Open Records Act in the disposition of a request for open records for a variety of items including a list of body cams worn by specified officers on a specific date.

Argument:

The agency was understaffed which caused the delay in the response to the request for open records. Several arguments were made regarding specific items including denials based upon the belief that “agencies are not required to provide information, create a record, perform research or create a list to satisfy a request.”

Summary:

Radcliff Police Department violated the Open Records Act by failing to make a timely response to an open records request, failing to explain the nonexistence of certain recorded communications, and failing to respond to some portions of a request. Radcliff Police Department did not violate the Act where a request was for information rather than records, or where records did not exist and the facts established no presumption of their existence.

19-ORD-122

In re: Ray Hacker, Jr./Jackson County Sheriff's Office

Issue:

Whether Jackson County Sheriff's Office violated the Open Records Act by withholding records according to Appellant's open records request.

Argument:

The sheriff's office advised they did respond, but they did not possess the requested records since the persons in question had never been employed by that office.

Summary:

Jackson County Sheriff's Office violated the Open Records Act in part by failing to conduct a good faith search for the requested records; the Sheriff's Office did not violate the Open Records Act when it refused to provide a copy of a record that did not exist.

19-ORD-124

In re: Mark Morton/Kentucky State Police

Issue: Whether the Kentucky State Police violated the Open Records Act in denying an inmate's request for a police report regarding an alleged assault of that inmate by correctional officers.

Argument: KSP stated that the requested records are part of an ongoing active investigation and may become evidence in a criminal trial.

Summary: Kentucky State Police did not violate the Open Records Act in denying request for records of an ongoing investigation where disclosure would reveal information to be used in a prospective law enforcement action, and KSP justified the refusal with the specificity required by KRS 17.150(3).

19-ORD-127

In re: Thomas Stone/St. Matthews Police Department

Issue: Whether the Saint Matthews Police Department violated the Open Records Act in the disposition of multiple open records requests.

Argument: Due to the amount of items requested and costs of producing said items, response will take more than the three days provided by the Act.

Summary: St. Matthews Police Department violated the Open Records Act by failing to expressly invoke KRS 61.872(5). SMPD initially failed to provide a detailed explanation of the cause for delaying access to responsive records, and failed to provide the place, time, and earliest date on which the public records would be available for inspection, but corrected the error during the appeal. SMPD met its burden of proof regarding costs of hard copies of responsive records, but subverted the intent of the Act, within the meaning of KRS 61.880(4), by imposing excessive fees for disks of responsive records and audio recordings.

19-ORD-147

In re: Trey Crumbie/Hardin County 911

Issue: Whether Hardin County 911 violated the Open Records Act in denying a request to the Chief Emergency Services Officer, Hardin County

Government, for “an opportunity to inspect or obtain copies of public records that pertain to any and all 911 emergency calls in the area of Trappers Ridge Court that occurred from noon to 1[:00] p.m. on June 20, 2019.”

Argument: The request was denied because “this record” is exempt based upon KRS 61.878(1)(a), as the public disclosure of the requested 911 recording “would constitute a clearly unwarranted invasion of personal privacy of the deceased’s family;” and 61.878(1)(l).”

Summary: Hardin County 911 initially violated KRS 61.880(1) in failing to explain how KRS 61.878(1)(a) applied on the facts presented, but ultimately satisfied its burden per KRS 61.880(2)(c) to justify the withholding of the requested 911 recording on the basis of that exception.

19-ORD-158 **In re: WKMS-FM/Murray Police Department**

Issue: Whether the Murray Police Department violated the Open Records Act in denying WKMS-FM’s request for copies of “Arrest Records, Booking Documentation and Search Warrants involving Dannis Seay from January 1, 2019 to July 2, 2019.”

Argument: The Department denied the request arguing “that the requested documents are part of an ongoing law enforcement action and the premature disclosure of same would be harmful to the Department, and further the requested information is of a personal nature and the public disclosure of same would clearly constitute an unwarranted invasion of the victim’s personal privacy. Additionally, the Department asserted that “disclosure of the requested information may constitute a violation of the CLERY [*sic*] Act, the Violence Against Women Act and potentially FERPA.”

Summary: Murray Police Department violated Open Records Act by denying access to arrest records, booking documentation, and search warrants pertaining to an individual. The Department’s initial response violated the Act by failing to identify any applicable exception. Identity of alleged rape victim, and specific identifying information for witnesses and uncharged individuals, may be redacted pursuant to KRS 61.878(1)(a).

19-ORD-166

In re: Timothy R. McCarthy/Kentucky State Police

Issue:

Whether the Kentucky State Police violated the Open Records Act in denying a request for “a copy of any and all police photos that were taken during an investigation.”

Argument:

The requested items are exempt under the Act since they are part of an ongoing investigation.

Summary:

Kentucky State Police did not violate the Act in denying a request for all photographs taken during the investigation of a specific accident, relative to which KSP has not declined prosecution, because it ultimately provided adequate specificity to justify its denial under authority of KRS 17.150(2)(d), incorporated into the Open Records Act by operation of KRS 61.878(1)(l).

19-ORD-175

In re: R. G. Dunlop/Kentucky State Police

Issue:

Whether the Kentucky State Police violated the Open Records Act in the disposition of requests for various records relating to KSP’s investigation of the Carter County Jail.

Argument:

Due to the storage location of the requested documents, it will take longer than three days to retrieve the item, and KSP did not possess all of the records requested.

Summary:

Kentucky State Police procedurally violated the Open Records Act by failing to make a timely disposition of an open records request and by failing to respond to most portions of the request; KSP substantively violated the Act by failing to explain why it did not possess a letter identified in its own report as an attachment. KSP did not substantively violate the Act where it did not possess records and the facts established no presumption to the contrary.

19-ORD-197

In re: Monica Luttrell/City of Covington Police Department

Issue: Whether the City of Covington Police Department violated the Open Records Act in its disposition of a request for “all body cam footage (unedited) of incident on Jan 28th .

Argument: The City advised portions of the video was redacted because they contained images of an undercover officer, and additional footage was redacted because it was considered Criminal Justice Information Systems according to the FBI.

Summary: City of Covington Police Department did not violate the Open Records Act by redacting Criminal Justice Information Services information from body-worn camera footage as permitted by KRS 17.150(4), or by failing to provide nonexistent records.

19-ORD-198

In re: Jon Fleischaker/Louisville Metro Police Department

Issue: Whether the Louisville Metro Police Department violated the Open Records Act in its disposition of an open records request from a reporter from the Courier-Journal.

Argument: LMPD argued that the FBI undertook the investigation looking into the particular issue addressed in the request, thus it no longer had possession of the records.

Summary: Louisville Metro Police Department violated KRS 61.880(1) by failing to search for responsive records, and by failing to cite a statutory basis for withholding responsive records, but partially corrected the error on appeal. LMPD also violated the Open Records Act by initially denying the request based on an erroneous presumption of non-possession of requested records. LMPD failed to meet its burden of proof in withholding the responsive records.

19-ORD-204

In re: David Noble/Lexington Police Department

Issue: Whether the Lexington Police Department violated the Open Records Act in its disposition of an open records request.

Argument: Lexington Police Department advised that it would redact the responsive records stating since no suspect was charged, all information relating to the suspect, including the suspect's name, must be redacted from the report pursuant to KRS 61.878(1)(a).

Summary: Lexington Police Department did not violate the Open Records Act by withholding the name and personal identifying information of the suspect and victim in Case Reports and Incident Reports on the basis of KRS 61.878(1)(a).

19-ORD-211 **In re: Alton Priddy/Bullitt County Sheriff's Office**

Issue: Whether the Bullitt County Sheriff's Office violated the Open Records Act in its disposition of a request for a copy of an investigation file.

Argument: The Bullitt County Sheriff's Office advised they could not locate the investigative file.

Summary: The Bullitt County Sheriff's Office violated KRS 61.880(1) as it related to a request for an investigation file, and failed to properly invoke KRS 61.872(5) in delaying its response to that request. The applicable retention schedules required the office maintain a copy of any such investigation file for a minimum of five years. Accordingly, Bullitt County subverted the intent of the Act by failing to establish an effective system for management and retention of its record.

19-ORD-216 **In re: David Noble/Lexington Police Department**

Issue: Whether the Lexington Police Department violated the Open Records Act in its denial of a request for certain body camera footage from the Department's investigation of an incident.

Argument: Video of from the camera showing interaction with the attorney's client was the only copy provided because the other persons in the remaining relevant videos have an expectation of privacy.

Summary: Lexington Police Department violated the Open Records Act to the extent that body-worn camera footage containing a suspect not charged with a crime could be provided in redacted form. The attorney was not entitled to copy of video under KRS 61.169 where footage did not contain incident in which his client was directly involved.

19-ORD-217 **In re: Jon L. Fleischaker/Louisville Metro Police Department**

Issue: Whether the Louisville Metro Police Department violated the Open Records Act in partially denying a request from *The Courier-Journal* for copies of transcripts of interviews with personnel, as well as the recommendation made by Major Frank Hardison.

Argument: Whether the Louisville Metro Police Department (“LMPD”) violated the Open Records Act in partially denying the requests and recommendation.

Summary: Louisville Metro Police Department did not violate the Open Records Act in withholding significant portions of the requested witness interview transcripts because the final decision maker, the Chief, did not review those records in reaching his determination regarding the subject Professional Standards Unit investigation. Those records consequently remained preliminary and LMPD properly denied access pursuant to KRS 61.878(1)(i) and (j).

19-ORD-221 **In re: Judy S. Brown/Hopkinsville Police Department**

Issue: Whether the Hopkinsville Police Department violated the Kentucky Open Records Act in the disposition of a request submitted.

Argument: Hopkinsville denied the request stating only person(s) involved, their representative insurance/attorneys, or a legal guardian of a juvenile can obtain a copy of a collision report. Hopkinsville claimed they can only release these collision reports with a properly executed subpoena or court order.

Summary: Hopkinsville Police Department violated KRS 61.880(1) by failing to issue a timely written response, and by failing to include a

statement of the specific statutory exception authorizing the withholding of responsive accident reports. HPD properly withheld copies of accident reports because the requesters were not parties authorized to receive copies. KRS 189.635(5) provides a blanket exemption to disclosure of protected records.

19-ORD-224

In re: *The Courier-Journal*/Louisville Metro Police Department

Issue:

Whether the Louisville Metro Police Department violated the Open Records Act in its partial denial of requests by *The Courier-Journal* relating to data on shooting incidents and thefts of firearms.

Argument:

The records were provided after the three day requirement and names of juveniles, victims, and dates of birth were redacted from the provided documents.

Summary:

Louisville Metro Police Department violated the Open Records Act by failing to make timely dispositions of requests for public records, but did not violate the Act by redacting names, residential address, and birthdates of crime victims pursuant to KRS 61.878(1)(a).