

Department of
CRIMINAL JUSTICE TRAINING

KENTUCKY JUSTICE AND PUBLIC SAFETY CABINET



Leadership is a behavior, not a position

OPEN RECORDS
DECISIONS



John W. Bizzack, Ph.D.
Commissioner





The Leadership Institute Branch of the Department of Criminal Justice Training offers a Web-based service to address questions concerning legal issues in law enforcement. Questions can now be sent via e-mail to the Legal Training Section at

docjt.legal@ky.gov

Questions concerning changes in statutes, current case laws and general legal issues concerning law enforcement agencies and/or their officers acting in official capacity will be addressed by the Legal Training Section.

Questions concerning the Kentucky Law Enforcement Council policies and KLEFPF will be forwarded to the DOCJT General Counsel for consideration.

Questions received will be answered in approximately two or three business days.

Please include in the query your name, rank, agency and a daytime phone number in case the assigned attorney needs clarification on the issues to be addressed.



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NOTE:

General Information concerning the Department of Criminal Justice Training may be found at <http://docjt.ky.gov>. Agency publications may be found at <http://docjt.ky.gov/publications.asp>.

In addition, the Department of Criminal Justice Training has a new service on its web site to assist agencies that have questions concerning various legal matters. Questions concerning changes in statutes, current case laws, and general legal issues concerning law enforcement agencies and/or their officers can now be addressed to docjt.legal@ky.gov. The Legal Training Section staff will monitor this site, and questions received will be forwarded to a staff attorney for reply. Questions concerning the Kentucky Law Enforcement Council policies and those concerning KLEFPF will be forwarded to the DOCJT General Counsel for consideration. It is the goal that questions received be answered within two to three business days (Monday-Friday). Please include in the query your name, agency, and a day phone number or email address in case the assigned attorney needs clarification on the issues to be addressed.

2008

Opinions of the Attorney General

Open Records

The following are brief summaries of Open Records Decisions made by the Office of the Kentucky Attorney General. Decisions that are appealed to the Kentucky 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 end of the summary.

For a full copy of any of the opinions summarized below, please visit <http://ag.ky.gov/civil/orom/>

08-ORD-001 **In re: Billy J. Moseley / Kentucky State Police**
Decided January 2, 2008

Moseley (an attorney) requested records regarding a death investigation in Pike County. Initially he did not receive any reply from KSP and he appealed. Upon that appeal, KSP replied that it had not received (or at least, could find no record of) the request. However, upon receiving the request, the KSP denied it on the basis of the investigation being open and ongoing and the Decision agreed this was appropriate.

08-ORD-003 **In re: Marcus M. McStoots / Louisville Metro Department of Corrections**
Decided January 4, 2008

McStoots requested inmate records, for himself, and was denied. Corrections first was unable to determine precisely what records McStoots wanted, and then stated that such records (an arrest records check) cost a standard amount of \$3 plus a self-addressed and stamped envelope. McStoots clarified that what he wanted was his inmate medical file, which would not be part of a records check. The Decision emphasized that it was incumbent on McStoots (an inmate) to precisely identify the records he seeks and to pre-pay for any copies. However, the Decision noted that the LMDC subverted the intent of the Open Records law by setting a fee that is not reflective of the actual cost to reproduce the record.

08-ORD-010 **In re: Clarence T. Hurst / Kentucky State Police**
Decided January 15, 2008

Hurst requested a copy of the video of the polygraph and the KSP polygraph policy related to a polygraph he took. KSP denied it, stating that releasing it would reveal examination tactics and questioning methods, forcing KSP to then change those tactics and methods. KRS 61.878(3) At the Attorney General's request, KSP provided materials to be examined *in camera* and in its Decision concluded that it was proper for KSP to deny access to the material.

08-ORD-020 **In re: Shelburn Ray Childers / Boyd County Sheriff's Department**
Decided January 24, 2008

Childers requested copies of dispatch logs, reports and a tape recording concerning an incident at his home. The Sheriff responded that the only report that was done was "non-criminal" and as such was not subject to release under the Open Records law. He also denied that the digital tape recorder in question had any recordings. However, the Sheriff did not cite any provision of law that authorized the denial of the records. The Decision stated that the report was clearly subject to release as a qualified public record, absent a specific citation to the law that authorized the denial. However, with respect to the recording, if the record does not exist, of course, it cannot be released, but it is incumbent on the agency to specifically state that it does not exist.

08-ORD-025 **In re: Margaret Brown / Kentucky State Police**
Decided January 31, 2008

Brown requested a copy of the death investigation file concerning her son. Although initially denied, upon appeal, the KSP released the majority of the file, but held back the information from AFIS, on the authority of KRS 17.150, which makes such records confidential. KRS 61.878(1)(l). The KSP also specifically redacted certain private information from the file, such as Social Security numbers and the like. The Decision agreed that such information was not required to be released.

08-ORD-059 **In re: Donald Ray Hall / Letcher County Sheriff's Office**
Decided March 21, 2008

Hall requested records from an incident that pre-dated the current Sheriff's term. The Sheriff's Office replied that all such records from that year were taken by the previous Sheriff and that they had no records relating to the incident. The Decision noted that since the records in question were 8 years old, it was reasonable to have destroyed them under records management, but that it was not legally sufficient to state that they were in the custody of the prior Sheriff. Specifically, the Court noted, if that was the case, it was incumbent on the current Sheriff to undertake an effort to regain those records, which belong to the office and not the Sheriff personally.

08-ORD-060 **In re: Capitol Publishing/ Lexington Fayette Urban County**
Government, Division of Police
Decided March 24, 2009

Capitol Publishing (Donato) requested a copy of each police dispatch log for a total of 17 days. LFUCG denied the request, stating that it would place an unreasonable burden on the agency, responding 23 days after the request was made. LFUCG admitted that their response was untimely. Although not part of the official denial, upon the request of the Attorney General, LFUCG elaborated that they would be forced to print, review and redact a vast number of reports to satisfy the request, as the agency receives approximately 2,500 calls per day. The Decision agreed that LFUCG's position was correct. The Decision noted that the request was specific and that it was then up to LFUCG to prove that it was burdensome by clear and convincing evidence. The Decision reviewed prior decisions on the issue, and noted that initially, LFUCG did not adequately explain why the request was burdensome, but upon further correspondence, the LFUCG was able to do so. Specifically, the request involved "numerous records in which confidential information is commingled with information that might be releasable," and as such, the request was ruled to be overly burdensome.

08-ORD-068 **In re: Stephen Mann/ Boone County Fiscal Court**

Decided April 8, 2008

Mann requested documents relating to the settlement of a lawsuit by the Boone County Sheriff's Office. The agency denied having any information relating to checks, and refused to release the settlement agreement arguing that it contained personal information and was deemed confidential. The Decision, however, found that "notwithstanding a confidentiality agreement, it is a public record for open records purposes and must be disclosed to the public upon request." Prior Decisions had noted that when such lawsuits involve the expenditure of public funds, they are a matter of "legitimate public concern which the public is entitled to scrutinize." The Decision held that absent specific and detailed information, it did not find that the settlement agreement had sufficient personal information to warrant withholding it from public scrutiny.

08-ORD-070

**In re: James (Chip) Adams II / Kentucky State Police
Decided April 10, 2008**

Adams requested specific records relating to the investigation of the abduction of a woman in 1995. KSP denied the request, asserting that the investigation remained open. Upon appeal, the Decision upheld the denial, but reiterated that it was incumbent upon the custodian of records to satisfy the burden by justifying the refusal with specificity. Upon appeal, KSP did provide more detailed justification for withholding the records, and noted, specifically, that DNA records are confidential under KRS 17.175(4) and exempt from disclosure. Requests relating to the same matter had been the subject previous decisions, 07-ORD-140 and 04-ORD-041, and the Decision reminded the KSP of its "statutory obligation to justify its denial with specificity in light of the fact nearly a year has gone by since the previous decision was issued and no further insight has been offered regarding the status of this investigation which has now been 'open' for nearly thirteen years."

The Attorney General questioned the "continued reliance by the KSP" on the "open investigation" provision, "in the absence of a more detailed explanation of specific insight regarding the status of the investigation, particularly since the likelihood of solving a case presumably decreases over time whereas the interest of the public in monitoring the actions of law enforcement agencies when a case remains unsolved increases proportionally."

08-ORD-080

**In re: The Courier-Journal / Kentucky State Police
Decided April 17, 2008**

The Courier-Journal (Shaver) requested a copy of the state's Sex Offender Registry and expressed a preference for it to be in one of several forms. He also requested the photographs posted on the site, in no specific format. KSP denied the request, characterizing it as a "standing request" and one that was overly burdensome since all the information is already readily available on the public website. The Courier-Journal appealed and KSP replied that the material was held in a nonstandardized and proprietary format, but admitted to having at least part of the database in an Excel format which did not specifically mirror the online database. (Further, they agreed that they had the photos in .jpg format, but that they were not linked to offender information.)

The Decision first noted that this was not a standing request, but a request for the material currently on the site. In addition, the Decision noted that the availability of materials on a website did not relieve an agency

from the duty to produce the records upon request. (And, it should be noted, KSP did honor a similar request from the year before.)

08-ORD-097 **In re: Michael G. Holmes / Louisville Metro Police Department**
Decided May 12, 2008

Holmes requested copies of documents, held by LMPD, relating to his request. He initially sent the request to the wrong address and the Decision noted that it was incumbent upon the agency to clearly post the proper address for such request. When the request did reach the proper party, approximately three weeks later, the responding party (a member of the agency's public information office) noted that they had located four responsive records and quoted the price, which was reasonable. She indicated that the records would be mailed upon receipt of the money. However, Holmes was a jail inmate in Shelby County and had not, at the time of the appeal, made arrangements to send the money to LMPD. As such, LMPD was correct to hold back the records awaiting payment.

08-ORD-099 **In re: Jewell Florea / Pulaski County Sheriff's Department**
Decided May 13, 2008

Florea requested records concerning the Sheriff's Office and two different private security firms. The Sheriff initially responded that he would need to research the legality of releasing the records. Florea appealed. The County Attorney responded that, upon research, there was no written contract, only a verbal contract. (He also noted that a written contract was in preparation and would be shared with Florea when finalized.) The Decision did note that the Sheriff's initial response was insufficiently detailed and did constitute a procedural violation of the Open Records Act, however.

08-ORD-105 **In re: The Northerner / Northern Kentucky University Police**
Department
Decided May 21, 2008

The Northerner (Call) requested copies for police reports and other documents related to a specific burglary that occurred on campus. The request was fulfilled in part but some information was refused because the investigation was ongoing, including information concerning the victim. Upon appeal, NKU stated that the initial material released should not have been released and blamed it on the responder's unfamiliarity with the Open Records Act. NKU reiterated its reliance on KRS 61.878(1)(h), the ongoing investigation exemption. Although the Decision noted that it was not enough to simply cite the exemption, but that NKU was also required to make a "particularized showing of harm from premature disclosure of [the] records." Such confidentiality provisions have not, generally, "been construed to extend to incident reports, such as the KYIBRS report at issue in this appeal, except for those portions of the reports that identify victims of sexual offenses." As such, the Decision concluded that NKU was incorrect to redact the materials released and to hold back other records, without a specific showing as to how this release would harm the investigation. It did agree that, for example, "officer's notes and written expressions of opinion as to targets of his investigation, the direction the investigation should take, and observations of, and opinions about, witnesses interviewed in the course of an investigation" could legitimately be withheld.

08-ORD-106 **In re: The Northerner / Northern Kentucky University Police**
Department
Decided May 21, 2008

The Northerner (Call) requested police records related to specific KYIBRS reports and was refused. The Decision reiterated its rationale in earlier opinions and confirmed that Call had a right of access to the unredacted copy of the report. The Decision upheld NKU's refusal to investigative records for the incidents, as the agency had generally met its burden to show how the release might harm the investigation. (NKU also properly denied other records in its reply that such records did not exist.)

08-ORD-107 **In re: Sally Wasielewski / Lexington Fayette Urban County
Government, Division of Police
Decided May 23, 2008**

Wasielewski requested a number of items and information related to a specific case. The Decision noted that that part of the request that requested information, as opposed to documents, was properly denied, as the agency was under no obligation to provide a list or create a record that does not already exist. The remaining items were denied on the representation that the case was currently being prosecuted. Further, at least one of the requests was denied as being unduly burdensome, and others were denied as simply not existing (including, for example, a breakdown of financial costs related to specific investigations). The Decision agreed that forensic records were properly characterized as investigative reports and could be held back so long as there was a real possibility of further judicial proceedings.

08-ORD-124 **In re: Donald Ray Hall / Letcher County Sheriff's Office
Decided June 12, 2008**

Hall requested information as the status of the Sheriff's investigation into records that were the subject of an earlier Open Records Decision (08-ORD-059). The Decision noted that because this was a request for information, rather than a request for extant documents, it was properly denied. Questions concerning the truthfulness of a response are not justiciable in this type of appeal, but instead, "reside in the courts."

08-ORD-125 **In re: Clarence T. Hurst / Kentucky State Police
Decided June 13, 2008**

Hurst requested video of his polygraph exam. KSP denied the request, arguing that such disclosure was unduly burdensome. He then requested a copy of the report, which was also denied, on the basis of KRS 61.878(1)(j), as being a preliminary recommendation. Hurst appealed, arguing that once the report was reviewed (by a quality control examiner) and forwarded to the requesting agency, it was no longer preliminary. He also noted that his request to view, rather than have, a copy of the video did not undermine the polygraph process, as he could not then readily share the information in the video. As a result, KSP agreed to produce a copy of the report, redacting only the name of the victim since the case under investigation was of a sexual nature.

The Decision noted that because Hurst was a former public agency employee, he had a greater right to access records relating directly to him than the general public, to the same records. As such, the Decision concluded that KSP should provide an unredacted copy of the report. KSP agreed to release a portion of the video, but reiterated its objection to releasing the entire video, arguing that it would "implicate release of confidential tactics, techniques and procedures" The Decision agreed that such denial was appropriate under KSP's representation of the need to develop new techniques if the video was made public.

08-ORD-135 **In re: Amy Mischler / Cabinet for Health and Family Services**
Decided June 30, 2008

Mischler requested copies of the Law Enforcement KASPER report relating to her, as well as a request for four reports requested from four different agencies. After clarifying that what she wanted were KASPER request forms (rather than KASPER reports, which are confidential), the CHFS provided her with a partial copy of a redacted document and further agreed to give her the forms, upon payment of copying and postage fees. They followed up by noting that they did not find any information specific to her in the database, and thus had nothing to produce. After further correspondence, the agency agreed to produce the records requested, upon payment, and the Decision concluded the issue was resolved.

08-ORD-138 **In re: Jason Mullikin / Maysville Police Department**
Decided July 14, 2008

Mullikin requested records with respect to accreditation for the department. Since MPD is not currently accredited, nor is required to be, MPD responded that no such records existed. However, because the record indicated that MPD had been accredited in the recent past (2006) and the agency apparently lacked any records relating to that process, the matter was referred to the State Archives and Records Commission to review the matter. (Such records are apparently not listed on any destruction schedule.)

08-ORD-146 **In re: The Eastern Progress / Eastern Kentucky University**
Decided July 24, 2008

The Eastern Progress (Kleppinger) requested all police reports covering a few days. EKU provided 14 reports, redacting all personal information from the victims, characterizing it as of a personal nature under KRS 61.878(1)(a). Kleppinger argued that EKU overstepped its authority by doing such a blanket redaction, and that addresses and such can only be redacted on a case-by-case basis. The Decision reviewed previous rulings on the same issue and agreed that it was only appropriate to redact information relating to juveniles and sexual assault victims. The Decision noted there was no prohibition on disclosing campus addresses or affording them any greater protection than the addresses of other places where crime had occurred. The Decision concluded that the redaction of that information was improper.

08-ORD-160 **In re: Rachel B. Shteir / Louisville Metro Police Department**
Decided August 6, 2008

Shteir requested the arrest report of a subject that had been arrested in the 1970s. LMPD responded that it required a date of birth and/or social security number to ensure that the correct record was provided. The Decision noted that LMPD was attempting to put more requirements upon the requestor than the law permitted. Shteir provided the full name of the offender and his crime and she could not reasonably be expected to provide such intimate details about the individual as required by LMPD. As such, the Decision concluded the LMPD subverted the Act by placing such additional requirements.

Further, although the Decision agreed that a little more information would have been better, that Shteir should resubmit the request with the information on the subject and that LMPD should then release the records.

08-ORD-171 **In re: Rae Anna T. Kirby / Butler County Sheriff's Department**
Decided August 20, 2008

Kirby requested documents and was quoted a price of 25 cents per page for copies. The Decision noted that ten cents was the maximum charge permitted for copies, unless the agency is able to specifically prove a higher cost - not including staff time.

08-ORD-172 **In re: Terrance E. Miles / Louisville Metro Police Department**
Decided August 20, 2008

Miles requested copies of 911 calls and calls to the LMPD tip line made during a specific time frame (1/2 hour) and date in 2005. In response, LMPD stated that such information is not retained by MetroSafe for more than two years. (In fact, that length of time is considerably longer than required by the KDLA retention schedule for such records.) Further, callers to the tip line are not recorded to maintain anonymity, so such records did not exist. The Decision agreed that the explanation for both was reasonable and ruled in favor of LMPD.

08-ORD-174 **In re: Neal Kirby / Butler County Sheriff's Department**
Decided August 21, 2008

Kirby requested a copy of a sworn statement that the Sheriff indicated he had in a newspaper article. The Sheriff originally denied the request verbally, but upon appeal, the Sheriff provided a written denial, premised on the fact the document was part of an open investigation. Kirby asserted that the tardy written response violated the required time frame and also that the Sheriff did not disclose how the statement would harm the investigation. The Decision noted that to satisfy the statute relating to such exemptions, that:

The agency must first establish that it is a law enforcement agency or an agency involved in administrative adjudication. It must next establish that the requested records were compiled in the process of detecting and investigating statutory or regulatory violations. Finally, the public agency must demonstrate that disclosure of the information would harm it by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action.

The Decision concluded that Butler County did not meet the final requirement, by not adequately describing the harm that could result from premature release of the record, and provided several citations for cases where the agency had made a sufficient case for withholding the record. A "bare claim" that is the case is not enough. The Decision also reiterated that an agency is required to respond within three days to such requests.

08-ORD-179 **In re: Clarence T. Hurst / Kentucky State Police**
Decided August 26, 2008

Hurst requested a copy of a "digital audio CD of a criminal investigative interview with a female inmate who alleged she had engaged in sexual misconduct with Mr. Hurst at the Warren County Jail." KSP denied the record because the inmate was the alleged victim in a sexual assault case. Hurst appealed, arguing that this was a closed investigation and he was the focus of the investigation. KSP agreed to release a portion

of the interview since the victim had already been identified in an earlier release of documents and because Hurst's status as a public official give him greater access to records directly related to him. KRS 61.878(3). KSP stated that since the interview makes accusations against other subjects, however, that it would redact such references. Hurst then argued that he was entitled to an unredacted copy of the opinion, because the investigation centered upon him.

The AG was provided, upon request, an unredacted copy of the interview. After listening to the interview, the Decision concluded that it was improper to redact the information, even though it was of a "uniquely sensitive nature," because allegations of sexual abuse in such context was "misconduct of the most egregious character" and a matter in which the public interest is great. The Decision agreed that he wasn't entitled to the recording under KRS 61.878(3), because it didn't relate directly to him, but concluded that the information was not exempt and KSP acted improperly in redacting the recording.

**08-ORD-182 In re: Terry Whittaker / Campbell County Detention Center
Decided September 2, 2008**

Whittaker requested personnel records relating to a former employee. She was initially told she could come to the jail to inspect the records, but was told by a clerk, upon arrival, that she needed to produce identification. She stated she didn't have ID, but proposed paying for the material and having it mailed to the address on the request. The jail refused that option as well. Whittaker appealed. The agency argued that it needed to be sure it was providing the records to the correct person and that it did send the documents the next day. (Whittaker acknowledged receipt of the material.) The Decision noted that it had long been the interpretation that producing ID was not a requirement and not a legally recognized basis for postponing a request, and was an "impermissible impediment" to her right to access. The Decision also questioned the agency's refusal to accept her offer to prepay for the records.

**08-ORD-183 In re: Terry Whittaker / Elsmere Police Department
Decided September 8, 2008**

Whittaker requested personnel records for 11 police officers and detailed the specific items being requested. The City attorney responded that the PD held the records and that since they would need to do redactions, it would take longer than three days. Because the files would have to be copied, and redactions made on the copies, Whittaker would be charged 5 cents for each copy, payable in advance. The Attorney also noted that it would like take 7-10 days before the files would be available. Whittaker, who was also a council member, was "further advised that complying with her written request 'may result in diminished police supervision.'" In addition, in further correspondence, she was advised to give the agency at least two hours notice of her arrival to get the records so that the Chief could be available.

Whittaker appealed. The City Attorney supplemented his response, noting that in order to make proper redactions, certain of the pages would have to be photocopied, as alterations could not be made on the originals. He insisted that a nickel was a reasonable fee for this service. He also noted that he was a part-time employee, so it would take some time to review and redact from the files.

The Decision addressed each point in turn. First, the Decision advised that since the records themselves were readily available, that the time frame given for inspection was too long. Neither of the exceptions provided by the statute applied in this case. In addition, the absence of the usual records custodian (on family leave) did not relieve the City of its obligations.

With respect to the charge for making copies for the purpose of redaction, the Decision noted that the statute leaves no doubt that the General Assembly intended agencies “bear the cost of redaction.” Finally, the Decision agreed that requiring the requestor to make arrangements to inspect records when the Chief was available was an impermissible requirement.

08-ORD-185 **In re: Michael Holt / Louisville Metro Police**
Decided September 4, 2008

Holt requested documentation concerning a specific officer and, specifically, whether he had been disciplined or demoted with respect to certain allegations. Upon receiving Holt’s appeal for a non-response, LMPD responded that it had not received the initial request but upon receiving the appeal, had investigated. It had learned that there was no record of any complaint with the Unit that would have taken such a complaint, and as such, no action had been taken against the officer in question. The Decision noted that the response was sufficient because it affirmatively stated that the agency did not have the requested record and “adequately explained the steps taken to see if such a record was maintained or existed at the facility.”

08-ORD-188 **In re: The Courier Journal and WHAS-11 / Jefferson County**
Metro Government MetroSafe
Decided September 5, 2008

The Courier-Journal (Halladay) and WHAS-11 (Hebert) requested recordings of 911 calls relating to a call on a child who had suffered a fatal accident. MetroSafe had initially responded to another request for the same material, arguing HIPAA, when it redacted portions of the recordings that detailed the child’s injuries and medical condition. MetroSafe had supplemented its response, noting that both requesters were given the dispatch event summary that listed the calls and dispatch times, and other detailed information, and further detailed the position of MetroSafe as a “hybrid entity” under HIPAA. MetroSafe also argued that the child’s immediate family had an expectation of privacy in the details that were excluded.

The Decision noted that it had earlier discussed (in 08-ORD-166) the “interaction between HIPAA and the state’s open records law” and concluded that covered entities under HIPAA must disclose health information under the required by law exception to HIPAA, to the extent that such disclosures are required under the Act. Although the Decision agreed that surviving family members might have a privacy interest, that such privacy interest did not necessary outweigh the public’s interests in knowing whether an emergency response was properly executed.

The Decision agreed that information concerning the child’s specific injuries and medical condition were private and could be withheld. Beyond that information, however, the Decision concluded that all other information, such as the child’s name and age, and the address to which the emergency vehicle was dispatched, was not protected and should have been released.

08-ORD-189 **In re: Terry Whittaker / City of Elsmere**
Decided September 5, 2008

Whittaker requested a number of records and was advised that certain of the records would be available on a specific date. When Whittaker went to the designated location to view the records, however, only a few

of the items were available. Whittaker requested either the records or a reason for the delay. When that was not immediately forthcoming, Whittaker appealed. The City responded that it was unaware that the items that were provided at no charge were insufficient, as they had heard nothing else from Whittaker. (The copies were left for her - Whittaker did not actually review the original records.)

The Decision noted that, without getting into a "swearing contest," that the City did not reply within the statutory three days to Whittaker's request - by either producing the records or explaining why the records were either not immediately available or being withheld. The Decision noted that nothing required that city records be held only at a specific location, and that it was reasonable to direct Whittaker to the PD to inspect such records normally kept at that location. Finally, the City's response that certain records did not exist was sufficient to resolve that point.

08-ORD-190 **In re: James S. Hughes / Lexington-Fayette Urban County
Government, Division of Police
Decided September 5, 2008**

Hughes requested a copy of the 911 call made from a specific residence in 2003. He specifically noted that he wanted the material in support of a case in which he was involved. The Decision agreed that Lexington denied the request, arguing that it should be withheld so long as "further judicial proceedings" remained a significant possibility.

08-ORD-200 **In re: Sheila Carpenter / City of Elsmere
Decided September 15, 2008**

Carpenter requested records concerning the timesheets, payroll records and shift activity logs relating to a police officer for a period of two years, as well as copies of tickets, citations and other sequentially numbered official documents issued by the officer during the same time frame. The City responded that the City Clerk would need to coordinate with the police department and the city attorney to gather the records, and that it would take at least 5-7 days to complete. Following the appeal, Carpenter was provided some of the records, but no explanation was given as to the non-production of the remaining records.

Carpenter advised the AG that a number of items requested were not part of the response and that she was orally advised the citations "go to the state" and therefore might not be available. The Decision concluded this response violated the act.

Further, the Decision noted that the records retention schedule required that uniform citations must be retained on the agency premises for two years (Series L4679), activity logs for one year (Series L4658), and daily detail assignment sheets (work schedules) for 2 years (Series L4657). Some of the records requested could have already been destroyed, but the City did not raise this as a defense. (If the records that could have been destroyed were, in fact, located, the City could not then destroy them and assert the defense.) The Decision mandated that the City continue to search for "all remaining responsive records" and produce them, and to advise both Carpenter and the Kentucky Department of Library and Archives if the items cannot be located. Doing so will satisfy the agency's duties under the Open Records Act.

08-ORD-205 **In re: Beverly Searles / Butler County EMS
Decided September 22, 2008**

Searles requested copies of dispatched calls to a specific location during a specified time frame of approximately 5 hours. The agency advised Searles verbally that such records would have to be subpoenaed. Searles appealed. The Butler County Attorney responded that the audio recordings between dispatch and officers would be released, but that the "original 911 call from the private citizen" would be withheld under the authority of KRS 61.878(1)(a) and Bowling v. Brandenburg, 37 S.W.3d 785 (Ky. 2001). Searles noted that since the caller had already been identified in the media, that the caller had no expectation of privacy, but that she was agreeable to having that information masked on the material.

The AG reviewed prior Decisions on similar requests. Although callers may have some right of privacy, in this case, that right was not implicated. However, the public did have an interest in the actions of the 911 operator, as a public servant discharging his or her public function, and the initial actions of the responding police officers, as public servants, discharging their public function, which are captured on the 911 recording, are "significant indeed." As such, the Decision mandated that the agency release the entire recording to Searles.

08-ORD-205 **In re: Chris Henson / Office of the Boone County Sheriff**
Decided October 3, 2008

Henson requested documents, and was quoted a price of 20 cents per page copy. This was justified apparently, by the need to copy each record twice, in order to make redactions. The Sheriff's office also noted it would need a week to research the request but did not provide an explanation for that delay. The Decision noted that if redaction requires the creation of a photocopy, that must be treated as a cost of redaction for which the agency must bear the cost. As such, the Decision concluded that the Sheriff's Office subverted the intent of the Open Records Act, short of denial of inspection, by its overcharge.

08-ORD-225 **In re: The Courier Journal / Jefferson County Metro Government**
MetroSafe
Decided October 20, 2008

The Courier- Journal (Halliday) requested copies of 911 dispatch tapes for a medical run to a local high school, providing a specific date and time frame. The Decision noted that 08-ORD-188, which was not appealed, was controlling precedent on the issue, and that Decision only authorized the nondisclosure of information specific to the subject's injuries and medical condition. As such, the Decision concluded that MetroSafe improperly withheld those portions of the 911 tape that were unrelated to the young man's medical condition. Such Decisions seek to strike a balance between the public's right to know that public employees are properly discharging their responsibilities and the privacy rights of surviving family members.

08-ORD-226 **In re: Ricky A. Lamkin / Kentucky State Police**
Decided October 20, 2008

Lamkin requested each and every document involving a death investigation in Murray. KSP advised that the records were part of an ongoing investigation. Lamkin disputed that characterization, since the officer involved in the wreck had already been indicted, and noted that he had no interest in the criminal investigation but was only interested in the accident investigation. Upon appeal, KSP reiterated that the

two matters were closely related and that the materials fell under the broad umbrella of an investigative report that could be withheld. The Decision concurred with the withholding of the records requested.

08-ORD-229 **In re: Gerald L. Greene / Kentucky State Police**
Decided October 23, 2008

Greene requested copies of investigative records, including a videotape, of an incident that resulted in the death of Deputy Sheriff Sean Pursifull. (Greene represents Pursifull's estate.) KSP denied the request and Greene appealed. The Decision concurred that since the records were related to a pending criminal prosecution, it was proper to withhold them.

08-ORD-238 **In re: Christopher Scroggins / Louisville Metro Police Department**
Decided November 6, 2008

Scroggins requested a number of records related to his criminal case. LMPD denied the request, arguing that the items were part of an ongoing criminal investigation. Scroggins appealed. As some of the records requested were then provided, issues relating to those items were now moot. With respect to records that LMPD indicated they did not have, or which did not exist, the Decision noted that the LMPD had provided an adequate explanation. With respect to records withheld, the Decision concluded that LMPD had made a proper argument for nondisclosure under KRS 61.878(1)(h) and (1)(l), as well as KRS 17.150(2) as the records were part of an ongoing investigation. Finally, with respect to at least one request, the LMPD indicated it was not clear what document Scroggins was seeking and he was advised to resubmit that request with more detail to clarify his request.

08-ORD-245 **In re: John R. Leonardt / Kentucky State Police**
Decided November 17, 2008

Leonhardt requested a copy of an accident report and was denied. The Decision concluded that because Leonardt's reason for requesting the report was to determine the identity of the individuals involved in that wreck, as he represented the estate of an individual who was killed in a second wreck precipitated by that first wreck, that KRS 189.635 permits the release of that record. In this case, specifically, the Decision concluded that KSP could "properly exercise its discretion in favor of disclosure of the accident report referenced in the report Mr. Leonardt has already received." Although the Decision did not find that KSP's failure to release the record to be a violation of the Act, it urged "KSP to revisit the question in light of" the observations made in the Decision.

08-ORD-247 **In re: Iran Neal / Kentucky State Police**
Decided November 20, 2008

Neal requested copies of all information concerning forensic examination and procedures (dating by to 2002) for cases involving him. KSP denied the request because Neal is currently under a criminal charge, and that Louisville Metro PD had requested that the information not be released at the time, until those proceedings are concluded. The Decision agreed that withholding the information was proper.

08-ORD-254 **In re: Chris Henson / Office of the Boone County Sheriff**
Decided November 26, 2008

Henson requested copies of records and was quoted a price of \$4.20 (\$2.20 for 22 pages and \$2.00 for postage and envelope). He appealed. The Decision noted that the fee for the copying was reasonable but referred the matter back to Boone County to justify the actual cost for the postage and the envelope.

08-ORD-259 **In re: Ilker Onen / Kentucky State Police**
Decided December 9, 2008

Onen, an attorney, requested investigative files related to a murder case in which his client was convicted. The requestor acknowledged the request was needed to support the post-conviction appeal. KSP denied the request and Onen appealed. The Decision agreed that because there was still an ongoing criminal proceeding, that withholding the records was proper.

08-ORD-266 **In re: Janet Brown New / City of Covington**
Decided December 17, 2008

New requested a number of records relating to the 911 system, for a period of about six months. The City Attorney responded promptly, and identified that 90 pages had been identified and would be provided to her upon payment of the copying charges. Further, he identified that certain items had been excluded, because they were in the category of preliminary recommendations. KRS 61.878(1)(j). New appealed. The City Attorney provided a more detailed response, identifying that several internal memoranda and email that were exchanged concerning the operation of the dispatch center and dispatching arrangements with the county that were never finalized or completed. The Decision agreed that such documents are exempt and only lose that status if they are adopted by the agency as part of its final action, and upheld the agency's decision to hold back those records.

New also disputed that some of the items were held back under the attorney-client privilege. The materials were provided, upon request, to the AG, and were generally described as email discussions on city legal matters. The Decision agreed that its review confirmed that the records were part of the professional legal relationship between the agency and the attorneys, and that the records had been considered and treated by both as confidential. Again, the Decision agreed that the materials were properly withheld.

08-ORD-270 **In re: Lexington Professional Firefighters IAFF Local 526 /**
Lexington-Fayette Urban County Government Division of
Enhanced 9-1-1
Decision December 18, 2008

IAFF Local 526 (Samuelson) requested documents and recordings related to a specific fire. 911 denied the request, initially, stating that the documents were part of an ongoing investigation. Once that investigation was closed, Samuelson submitted a second request, but was told that because the records were voluminous and not centrally located, it would take some time to fulfill the request. He was told he would be updated in 5-7 days. Some days later, Samuelson was told that everything but the actual 911 call was available, but that was being held back as exempt pursuant to KRS 61.878(1)(a), and that the video from the Alarm room had been destroyed during archiving.

IAFF appealed, questioning the "premature destruction of the video" as well as the delayed response. The Decision agreed that the initial response was unsatisfactory, as it did not provide a detailed explanation as to the delay and the date when the materials would be available. In addition, the 911 center was incorrect

in only providing a transcript, rather than a copy of the actual call, but offered no explanation for the nondisclosure. The AG reviewed the tape and found nothing of a personal nature. As such, only the caller's name and identifying information could be held back from the IAFF. Finally, with respect to the destroyed tape, the initial request, and a follow-up, came in far before the retention period for that record had expired. Although he had been instructed to submit a new request that didn't arrive until after the 30 days, his interest in the item had already been confirmed. Since the request was pending, the recording should have been secured and held, and the failure to do so suggests improper records management practices. Although the Decision did not purport to settle the dispute, it agreed that its destruction was premature and improper and the matter was referred to KDLA for appropriate follow-up.

KENTUCKY

Open Records

61.870 Definitions for KRS 61.872 to 61.884

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

(1) "Public agency" means:

(a) Every state or local government officer;

(b) Every state or local government department, division, bureau, board, commission, and authority;

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

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

(e) Every state or local court or judicial agency;

(f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;

(g) Any body created by state or local authority in any branch of government;

(h) Any body which derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds;

(i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c),

(d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof;

(j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and

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

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

(3) (a) "Software" means the program code which makes a computer system function, but does not include that portion of the program code which contains public records exempted from inspection as provided by KRS 61.878 or specific addresses of files, passwords, access codes, user identifications, or any other mechanism for controlling the security or restricting access to public records in the public agency's computer system.

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

(4) (a) "Commercial purpose" means the direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee.

(b) "Commercial purpose" shall not include:

1. Publication or related use of a public record by a newspaper or periodical;
2. Use of a public record by a radio or television station in its news or other informational programs; or
3. Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties;

(5) "Official custodian" means the chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control;

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

(7) "Media" means the physical material in or on which records may be stored or represented, and which may include, but is not limited to paper, microform, disks,

diskettes, optical disks, magnetic tapes, and cards; and

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

61.871 Policy of KRS 61.870 to 61.884; strict construction of exceptions of KRS 61.878

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

61.8715 Legislative findings

The General Assembly finds an essential relationship between the intent of this chapter and that of KRS 171.410 to 171.740, dealing with the management of public records, and of KRS 11.501 to 11.517, 45.253, 171.420, 186A.040, 186A.285, and 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.

61.872 Right to inspection; limitation

(1) All public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No person shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.

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

(3) A person may inspect the public records:

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

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

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

(5) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed three (3) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection.

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

61.874 Abstracts, memoranda, copies; agency may prescribe fee; use of nonexempt public records for commercial purposes; online access

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

(2) (a) Nonexempt public records used for noncommercial purposes shall be available

for copying in either standard electronic or standard hard copy format, as designated by the party requesting the records, where the agency currently maintains the records in electronic format. Nonexempt public records used for noncommercial purposes shall be copied in standard hard copy format where agencies currently maintain records in hard copy format. Agencies are not required to convert hard copy format records to electronic formats.

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

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

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

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

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

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

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

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

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

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

(c) Noncommercial purpose, if the person uses or knowingly allows the use of the public record for a commercial purpose. A newspaper, periodical, radio or television

station shall not be held to have used or knowingly allowed the use of the public record for a commercial purpose merely because of its publication or broadcast, unless it has also given its express permission for that commercial use.

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

- (a) The cost of physical connection to the system and reasonable cost of computer time access charges; and
- (b) If the records are requested for a commercial purpose, a reasonable fee based on the factors set forth in subsection (4) of this section.

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

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

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

61.876 Agency to adopt rules and regulations

(1) Each public agency shall adopt rules and regulations in conformity with the provisions of KRS 61.870 to 61.884 to provide full access to public records, to protect public records from damage and disorganization, to prevent excessive disruption of its essential functions, to provide assistance and information upon request and to 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.

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; and

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

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

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

disciplinary actions, examination scores, and preliminary and other supporting documentation. A public agency employee, including university employees, applicant, or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.

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

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

61.880 Denial of inspection; role of Attorney General

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

under his authority, and it shall constitute final agency action.

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

61.882 Jurisdiction of Circuit Court in action seeking right of inspection; burden of proof; costs; attorney fees

(1) The Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained shall have jurisdiction to enforce the provisions of

KRS 61.870 to 61.884, by injunction or other appropriate order on application of any person.

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

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

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

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

under this subsection shall be paid by the agency that the court determines is responsible for the violation.

61.884 Person's access to record relating to him

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