Department of
CRIMINAL JUSTICE TRAINING

KENTUCKY JUSTICE AND PUBLIC SAFETY CABINET

2012

KENTUCKY OPEN RECORDS DECISIONS

FIRST HALF OF YEAR

John W. Bizzack, Ph.D.
Commissioner

Current through 2012 - 116

Department of Criminal Justice Training

Kentucky Justice and Public Safety Cabinet

Kentucky Leadership Institute

Leadership is a behavior, not a position

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.

DOCJT.KY.GOV

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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.

2011
Opinions of the Attorney General
Open Records
(First Half of Year)

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/.

12-ORD-001 **In re: Animal Legal Defense Fund / Kentucky Board of Veterinary Examiners**
Decided January 3, 2012

The ALDF requested records relating to the Taylor County Animal Shelter relating to a specific ongoing investigation. The initial response of the KBVE was deficient as it failed to note whether responsive records even existed, and if so, the specific statutory basis was for withholding the records. The KBVE argued that it was engaged in an ongoing investigation, and the OAG agreed it was appropriate to hold back records related to that investigation. However, it noted the request was for documents going as far back as 2007, and the KBVE was obligated to search for earlier investigations that had been concluded

12-ORD-004 **In re: James Potter / Kentucky State Police**
Decided January 5, 2012

Potter requested copies of photos of items seized inside a house in West Paducah, pursuant to a search warrant. KSP denied the request as part of an ongoing investigation. Apparently these photos were not introduced at the original trial. The OAG noted that a case that would provide guidance on what records might be released under the ORA is pending (Cincinnati Enquirer v. City of Ft. Thomas) is not yet final, and declined to order the release of the disputed documents at this time.

12-ORD-011 In re: Tammie Nava / Cabinet for Health and Family Services
Decided January 10, 2012

Nava requested reports that alleged that she committed abuse, neglect, dependency or exploitation of an unnamed subject. The CHFS masked the information that indicated who made the report, under KRS 620.050(5)(a). Initially it refused the request as part of an ongoing investigation, but upon Nava's appealed, it explained that at the time of the initial request, she was under investigation. That investigation was concluded at the time of the appeal, which was why the report was released in a redacted form. The Decision agreed, after reviewing an unredacted copy, that the masking of the informant's identity was appropriate.

12-ORD-013 In re: Eugene E. Bates / Lexington-Fayette Urban County Government Division of Police
Decided January 11, 2012

Bates requested the inspection of policies related to several topics. Bates, however, was incarcerated in the local jail and could not inspect the documents in person. The Decision agreed that in such circumstances, it was proper to require him to prepay for the requested copies of the documents.

The Decision, however, did note that the initial response did not properly cite the correct reason for the denial and that apparently, the denial was made before the acting custodian even confirmed whether requested documents even existed. The OAG emphasized that it was incumbent that the responding party to retrieve all responsive document and review them before issuing a denial.

12-ORD-022 In re: WDRB-TV Fox 41 News / Department of Criminal Justice Training
Decided January 23, 2012

Haeberle (of WDRB) requested an investigative reported related to a weapons discharge that occurred during a concealed carry class. The Decision noted that the law did not exempt such documents from disclosure, although the stated law did prohibit the release of a great deal of other information related to permit holders.

12-ORD-023 In re: Jeffrey Carpenter / Administrative Office of the Courts
Decided January 24, 2012

Carpenter requested "all centralized criminal history records and information" relating to himself. The AOC responded that they are not subject to the Open Records Act, by virtue of a different Kentucky statute. However, the AOC agreed it was willing to provide the records upon completion of a specific form and payment of a fee.

12-ORD-024 **In re: Ondra Clay / Lexington-Fayette Urban County Government, Division of Police**
Decided January 24, 2012

Clay requested witness statement collected during the investigation of a specific case. LFUCG denied the request, citing KRS 61.878(1)(h) and noting that Clay was still serving his sentence for the crime. Even though no evidence was presented suggesting post-conviction proceedings were ongoing, it was still appropriate to deny the request.

12-ORD-029 **In re: Kentucky Employers' Mutual Insurance/ Kentucky State Police**
Decided February 1, 2012

De John (on behalf of the KEMI) requested records from KSP relating to a motor vehicle wreck concerning Music. KSP provided all of the records except for the toxicology reports, denying access to those records under KRS 61.878 (1)(a). KEMI appealed to the OAG, noting that it had a duty to fully investigate a worker's compensation claim. KSP agreed that it had the records in question, but argued that an underlying criminal case was still pending. The Decision agreed that it was appropriate to withhold the investigative report at this time.

12-ORD-034 **In re: Jonathan D. Boggs/Rowan County Board of Education**
Decided February 9, 2012

Boggs requested (on behalf of a student's parents) a review of a video made on a particular school buss on a stated day, that captured an altercation between their child and another individual. The Board denied the requested citing the Family Education Rights and Privacy Act (FERPA), 20 USC 1232g along with its Kentucky equivalent, KRS160.700 et seq, along with KRS 61.878(l)(k) and (l). Further, the Board noted that redaction of the faces of other juveniles was not possible.

There was also discussion of a discrepancy, as originally, the school system had been informed by the student's stepfather that the incident occurred a day later than it was later claimed to have occurred, and as a result, the transportation office pulled and retained the wrong recording. By the time the official request was made, the original video had been overwritten by new surveillance footage. Further correspondence indicated that the appropriate footage had been reviewed, as a result of an intervening discussion with the family, and did not show an altercation. However, the Decision agreed that such records are barred from disclosure as 'education records" under FERPA and upheld the Board's position.

On a related note, the matter was referred to the Kentucky Department of Libraries and Archives for review of the appropriate retention schedule for such video records.

12-ORD-042 In re: Michael Sheliga / Mt. Vernon Police Department
Decided February 23, 042

Sheliga requested six categories of records relating to a specific DUI arrest. Specifically, he requested the in-car video and photos taken of the subject and his vehicle, apparently at the scene. The photos were subsequently provided so that issue became moot. MVPD indicated that despite a mark on the citation indicating there was video, that in fact, no video was made. Sheliga, however, challenged that statement, arguing that several MVPD cars were present and that it was likely that at least one was making video. Responding, MVPD reiterated that the check mark was a mistake and that the arresting officer's video recording device was never activated. The Decision agreed that it was not the duty of the OAG to resolve a dispute as to whether or not records actually exist, despite Sheliga's argument that there was sufficient evidence that suggested the video does exist.

The Decision upheld the denial.

12-ORD-044 In re: Michael Sheliga / Rockcastle County 911 Board
Decided February 23, 2012

Sheliga requested a 911 recording and log for a specific date and period of time. The 911 Board denied the request, noting that the situation was part of an ongoing investigation. The initial response was deemed insufficient because it did not cite the specific exception upon which the Board was relying. In the course of additional correspondence, the Board noted that the situation was part of an ongoing investigation by the Mt. Vernon Police Department. Upon request, a copy of the disputed document and recording were provided to that OAG for in camera review. The OAG noted that the recording documented "radio communications concerning a traffic stop" and "little more." Nothing in the records "contain primary evidence establishing critical elements of the offense that are central to the … investigation" or other damage the law enforcement investigation. The Decision ruled that the Board "did not present sufficient proof of harm to justify its denial of the request.

12-ORD-045 In re: James Potter/ Kentucky State Police
Decided February 27, 2012

Potter requested documents reflecting KSP policies on search and seizure related to a particular case. KSP responded that the documents requested were part of an ongoing investigation and would not be disclosed, pursuant to KRS 61.878(1)(l) and (1)(h). Potter appealed the denial. He argued that what he wanted specifically was photographs relating to the evidence seized during the search that resulted in his conviction. KSP responded that access to such records were more properly made through the prosecution authorities. The OAG agreed that because his conviction was not yet considered final, being subject to post-conviction relief, that denial of the records was appropriate at this time.

12-ORD-055 In re: Messenger-Inquirer / Owensboro Police Department
Decided March 12, 2012

Mayse (Owensboro Messenger-Inquirer) requested records related to OPD PIO Cosgrove (a police officer). The requested records were the investigative records of an internal affairs investigation, including the initiating complaint. The OAG agreed it was proper to withhold the files, but initially ruled that the initiating complaint should have been released. Owensboro PD responded that there was no initiating complaint and that because she resigned prior to adjudication, there was no final action relating to her case. The OAG requested and received a number of documents from OPD, in order to fully resolve the matter. (The Decision noted that several documents in the file were entitled "complaints" but the OPD explained that they were actually investigative forms. The Decision "turned on the fact that no final disciplinary action had been taken regarding the subject investigation." However, the OAG agreed that access to documents that relate to allegations of misconduct, "as well as both voluntary and involuntary separation from public employment," is something to which the public is entitled and ruled that the initiating complaint documents, although marked internal, were not excepted from the general disclosure requirement.

12-ORD-066 In re: Uriah Pasha / Morgan County Attorney
Decided March 23, 2012

Pasha requested a copy of a criminal complaint he filed against a specific subject (who apparently worked for the Dept. of Corrections) from the Morgan County Attorney. The Court agreed that although the County Attorney should have responded to the request, that she was not obligated to disclose the record to Pasha as it was part of an open criminal investigation. The OAG upheld the denial.

12-ORD-071 In re: Heidi K. Erickson / Bourbon County Sheriff
Decided March 29, 2012

Erickson requested "legal paperwork" – later determined to be a Writ of Possession – for a particular case handled by the Bourbon County Sheriff. She received no response to the request, initially, although apparently there was some discussion of a $5 fee for copies. Upon appeal, the Sheriff responded that the document in question, once executed, was returned to the Circuit Clerk and that the Sheriff's Office maintained no copies. The OAG agreed that the failure to respond to the request, even if only to say that the agency had no responsive records, was a violation of the ORA. Certainly, there was no legal requirement for the agency to have a copy of the writ. With respect to the fees, the Decision noted that the alleged fee (not refuted by the Sheriff's Office) was far in excess of the fee permitted under state law, and that the Sheriff's Office "subverted the intent" of the ORA "short of denial of inspection, by imposing excessive fees.

12-ORD-079 In re: LeAnders L. Jones / Kentucky State Police
Decided April 17, 2012

Jones requested copies of a police report with respect to a particular incident. The KSP denied the request under KRS 17.150(2) and 61.878(1)(h) because the investigation was still open. Jones appealed, arguing that her employer, an insurance company, was involved in an action against the individual. KSP responded that the subject is in a diversion program, and could face further legal action should he not successfully complete the program. The Decision upheld the denial of the records.

See NOTE at end regarding this case

12-ORD-095 In re: Wayne Murphy / Kentucky State Police
Decided May 11, 2012

Murphy requested a number of documents, regarding DNA testing and other items submitted to the crime lab, that were part of an ongoing criminal case in Greenup County. (Murphy was the subject in the case.) KSP denied those requests pursuant to KRS 17.175(4) and KRS 61.878(1)(l). Murphy had apparently already been convicted, but the decision is unclear as to the current status of his case. The Decision upheld the denial.

See NOTE at end regarding this case

12-ORD-097 In re: Charles Coleman / Campbell County Public Library

Coleman requested access to what turned out to be over 22,000 emails from and to Library Director Morgan's email account. Morgan responded that the information would be produced, but that it would take six months for him to go through every email and sort out which ones were responsive to the request. Coleman agreed to a short extension but when that was refused, he appealed the longer time frame. The OAG indicated that the proposed time was far in excess of what would be permitted in any but the most extreme of circumstances, and agreed that the amount of work required to review the emails did warrant the delay.

However, the Decision noted that "this represents the outer most limit of acceptable delay" and emphasized that the library must commit itself to meeting the date given.

Of note, the Decision went on to emphasize that "had library staff engaged in proper records management, consistent with guidelines and training available through the Kentucky Department for Libraries and Archives, the volume of responsive records, and corresponding burden to produce them for inspection under the Open Records Act, would have been significantly decreased." The Decision urged the agency to review the KDLA website and utilize the best practices described there.
(See http://kdla.ky.gov/records/recmgmtguidance/Pages/elecrecmgmt.aspx.)

12-ORD-105 In re: Kevin Brumley / City of Bardstown
Decided May 31, 2012

Brumley requested a copy of the minutes and the "official recording" of City Council meetings related to a specific ordinance. He also requested "all letters, emails, or any other public records" relating to the matter, from any employee of city government. Brumley delivered the request by hand to a receptionist at City Hall. However, the City Clerk was not in the office. The City Attorney responded several days later, providing some of the requested documents. He noted they were still researching the remainder of the request. (It was noted that the City Clerk's absence delayed the request. Brumley appealed the failure to "provide him with timely access to all existing responsive public records."

The OAG concluded that although the delay was minimal, the failure by the City to respond within the statutory three days made the City's response deficient. The City's response gave no explanation for the delay, and further, the temporary absence of the official Records Custodian was not sufficient justification. The Decision emphasized that the City was obligated to make "proper provision for the uninterrupted processing of open records requests," and when the official custodian is absent, an acting custodian must be named.

12-ORD-111 In re: Robin L. Browning / Transportation Cabinet
Decided June 15, 2012

Browning requested a number of records relating to certain road improvements in Harlan County. The Cabinet responded, albeit one day late. With respect to certain of the requests, however, the Cabinet directed the requestor to their website for the information. The Decision agreed this was improper and the requestor was entitled to paper records if they so desired. The Decision also noted, however, that some of the requests were not sufficiently specific and as such, it was proper to deny those requests at this time.

12-ORD-112 In re: Darryl Denham / Kenton County Public Schools
Decided June 15, 2012

Denham requested a number of items from the Kenton County Public Schools relating to his son, a middle-school student, who committed suicide in October, 2011. Three records remained in dispute, the principal's files relating to the child, student letters written to the Denhams as part of a class assignment and the counselor's notes. With respect to the principal's file, the KCPS argued that such files, if they indeed exist, were the personal property of the principal. The OAG concluded however, that if the file exists, it is a public record subject to disclosure. With respect to the student letters, the OAG categorized them as peer graded assignments not covered by FERPA, because they are not kept under lock and key. And, even if turned over to the counselor, as they apparently were, they became directly related to Denham's son, and as such, were subject to disclosure. However, that proved impossible as they had been shredded,

which the Decision concluded was improper, which the OAG agreed was an improper destruction in violation of the records retention process. Finally, with respect to counselor notes, the Decision noted that their existence was in dispute. An email exchanged at least suggested that some records were possibly kept. The Decision agreed that if notes exist, the Denhams were entitled to the notes under FERPA.

The Decision noted that this situation highlights the need to ensure compliance with the statutory mandate to create and enforce a code of acceptable behavior in each local board of education's schools. Such a code exists in Kenton County, but nothing requires the creation of records documenting investigations of bullying or harassment. The Decision urged the KCPS reevaluate its code and require documentation and accountability relating to such investigations. The matter was referred to the KDLA for further review.

12-ORD-114 In re: Millard R. Boggs / Hardin County Attorney
Decided June 19, 2012

Boggs wrote a letter to the County Attorney complaining of an assistant's actions. In the body of the letter, he requested a copy of certain items, including the work ethics code. Receiving no response, he appealed. The County Attorney explained that she didn't perceive the request as an Open Records request and stated that in fact, she had no documents responsive to the request. The Decision agreed that the request as "collateral to his critique" and "buried" in the text of the letter but agreed that it was deserving of a response as an Open Records request.

12-ORD-116 In re: Dustin Bell / Louisville Metro Police Department
Decided June 26, 2012

Crooks (and later Bell) requested a copy of the 911 dispatch tape for a collision report. The tape was provided, but information about the individuals who called in the incident were redacted under KRS 61.878(1)(a) based upon a personal privacy interest. Bell appealed, arguing that the facts of the collision were in dispute and they needed to speak to witnesses. The Decision noted that Open Records law exists to serve the public interest, specifically, to "monitor the actions of the LMPD and, in particular, its emergency 911 system," not to pursue a legal claim. Redacted copies of the tapes were appropriate to serve that interest.

NOTE: *ORD 79 and 95 share an underlying issue. In both decisions, the KSP denied access to records because the underlying criminal case which generated the records was not yet considered final, although both had resulted in a conviction. The OAG noted that although these decisions were being decided as they were because of ORA precedent, that the result might change depending upon the result of a pending case, Cincinnati Enquirer v. City of Fort Thomas, now on review by the Kentucky Supreme Court.*

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.