2013
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 will be found at the end of the summary. As always, for guidance specific to a particular situation, please contact your local legal counsel.

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

13-ORD-015 **In re: Lynn Hesselbrock /Taylorsville-Spencer County Fire Protection District**
Decided January 23, 2013

Hesselbrock requested "any written instrument that exists between [Chief Nathan Nation] and any member of [Ms. Hesselbrock's] staff." (Hesselbrock is the Spencer County Clerk.) The Fire Chief initially denied the request as "improperly framed" but suggested that she be more specific. Instead, Hesselbrock appealed. The County Clerk's website had listed six employees on Hesselbrock's staff but the Decision noted that without that information directly from Hesselbrock, the Chief "had no starting point from which to commence his search." Her request "was not limited by time or topic, nor, as noted, did it identify her employees." It was therefore proper for the Chief to request more information and denied the appeal.

13-ORD-016 **In re: James R. May / Mercer County Sheriff's Office**
Decided January 23, 2013

May requested a copy of a CD disk of phone calls that Deputy Swabey obtained from the Boyle County Detention Center, during Swabey's criminal investigation of May. He also requested a copy of a recorded statement made by a witness (McFerron) during Swabey's investigation. He received no response and appealed. Mercer County Attorney Dean acknowledged that the county was deficient in not responding in a timely manner, further responding that the requested records were not in the possession of the Sheriff's Office, having been turned over to the Commonwealth's Attorney for use in the criminal prosecution. May argued that they were deliberately removed so as to prevent his access. In this case, the Decision agreed the Sheriff's Office fulfilled its mandate under the law by affirming that it no longer possesses or retains the records and

directing the requestor to where the records might be found. The Decision denied the appeal.

13 ORD-019 In re: Bell County Volunteer Fire Department / Bell County Sheriff's Department, Bell County 911 Dispatch, Bell County Emergency Management Services.
Decided January 30, 2013

Chief Miracle (Bell County VFD) requested a number of CAD reports from the Bell County Sheriff, the 911 Center and EMS for the years 2011 and 2012 for all accidents with injury to which the VFD responded, and from EMS, all instances in which the BCVFD set up landing zones. After a short delay, due to the magnitude of the request, Chief Miracle was told there were 104 traffic reports, which could be had for a "standard copying charge of $5 per report." The 911 Center notified Miracle that they had 213 responsive records and requested the same amount per copy. EMS reported finding 80 responsive records, again requesting the same fee.

The Bell County VFD appealed the imposition of excessive copying fees. The Bell County attorney defended the fees demanded by the 911 Center and EMS, based upon the amount of work necessary to sort them out and copy them on a color printer, and noted that the issue of the accident reports was moot as the Sheriff could not, by KRS 189.635, turn them over anyway. The Decision ruled that the Sheriff could not disclose the reports, under the statute, but concluded that the fee demanded for the 911 and EMS reports was excessive and not supported by the evidence as to the cost of actually producing each document. In lieu of that, the Decision approved the reasonableness of a fee of ten cents per page.

13-ORD-023 In re: Richard Schapiro / Kentucky State Police
Decided February 8, 2013

Schapiro requested all photos connected to the investigation of the case of Sparkman. It was initially investigated as a homicide but later determined to be a suicide. KSP agreed to provide scene photos only, explaining that photos (presumably of the body) were too graphic and would be withheld under KRS 61.878(1)(a), as that might cause harm to his surviving family. Schapiro appealed. He was given a "grainy Xeroxed copy" of the desired photo, although other photos were provided in normal photo format, and he challenged that a better, "photograph quality image" could be withheld under that argument. The Decision noted that "what the public gets is what [the agency has] and in the format in which [the agency] has it." The Decision stated that he was entitled to a proper copy of the photo.

13-ORD-025 In re: Capitol Radio Traffic Systems, LLC / City of Newport
Decided February 15, 2013

Capitol Radio Traffic Systems requested all accident reports from the Newport PD during a defined time frame. The PD refused, arguing that the company was not a "newsgathering organizations under KRS 189.635(8)" and thus was not entitled to the

records. Capitol Radio "provides content to radio stations in its network" in a manner similar to the AP for newspapers. (In turn, Capitol refused to disclose details of its business operations to the City of Newport.) The Decision agreed that although the issue of the intended use should be "more fully developed," that Capitol was, however, a newsgathering organization, even if it disseminated news through the Internet or other less conventional means. (The material was apparently published on a subscription based website.) The Decision referred the matter back to the parties to allow Newport to attempt to prove its belief that Capitol Radio's use of the data was for commercial purposes.

13-ORD-028 In re: Winston Wright / Marion Adjustment Center.
Decided February 26, 2013

Wright, an inmate, requested all documents on a specific matter from the Marion Adjustment Center. He received the items, lacking one he expected. He submitted a second request, to which the MAC responded that the document he specifically wanted was not in the file. He returned with a copy of the document that he obtained from a different file on a related issue. Upon appeal, the MAC did not respond, and as such, the Decision noted that it could only presume that they had the document at some time in the past but that it was missing from that file on the date the request was made. The Decision noted it could not require production of a document that the agency does not have, but that a question that records were "lost or misplaced" presented a records management issue. The matter was referred to the Kentucky Department of Library and Archives for further review.

13-ORD-030 In re: Capitol Radio Traffic Systems, LLC /City of Elizabethtown
Decided February 26, 2013

Capitol Radio requested accident reports from the City of Elizabethtown. They were offered heavily redacted copies at a cost of $5 per page. Capitol Radio appealed and during subsequent correspondence, the City expressed doubt about whether Capitol Radio was a newsgathering organization under KRS 189.635(8). The Decision noted that both issues had already been decided in prior decisions from 2013 and Capitol should be provided with unredacted copies at a reasonable fee, unless and until it is proven to not be a newsgathering organization.

13-ORD-034 In re: Philip J. Edwards / Louisville Metro Police Department
Decided March 8, 2013

Edwards requested copies of video recordings made by two officers during stops over a particularly time frame (essentially two days). The LMPD initially requested additional time to produce, given the scope of the request. It indicated it needed yet another two weeks as it would be necessary to redact personal information, and for the first time, invoked KRS 189A.100(2)(e) to refuse to disclose the DUI video. Several weeks after the last date agreed upon, Edwards appealed the delay as well as the LMPD's "overbroad interpretation" of the statute. In further correspondence, LMPD indicated

that they had found 40 responsive videos, only five of which involved a DUI. The Decision agreed that it was proper not to allow him access to the DUI videos (in fact, the agency offered to let him view, but not copy the 5 they had). However, the Decision found a violation for LMPD's failure to provide a detailed explanation as to why there was such a delay (approximately 2 months from the time he made the request until the appeal) in producing the other recordings.

13-ORD-038 In re: Krista A. Dolan / Kentucky State Police
Decided March 12, 2013

Milburn (a DPA Investigator) requested the following from KSP.

> 1. A list or log of any evidence remaining in the custody of the lab from the Hopkinsville Police Department case #910203010, Commonwealth vs. Charles Bussell[;]
> 2. A copy of the CV Competency tests and files, proficiency tests results, proficiency tests files, personnel files, certifications and number of times qualified as an expert for all lab technicians that worked on the case[;]
> 3. Any reports completed in connection with the case, including lab files, reports, bench notes, photos/diagrams and data. All correspondence, including e-mails and chain of custody documents[;]
> 4. A copy of the Standard Operating Procedures Manual for the lab, Coverdell Investigation Documents, interpretation guidelines, audit reports, internal and external audit reports, validation studies, corrective action documents, quality control-assurance manual, training manual, user manual and maintenance records.

It was initially denied by Perkins (the Custodian) because the items pertained to a criminal case in which an appeal was pending, under KRS 17.150(2) and KRS 61.878(1)(h). Further, since the matter involved DNA testing, KSP also invoked 17.175(4). Bussell (an assistant Public Advocate) appealed, noting that the defendant's case was, in fact, final. In addition, most of the records had been released during the course of the lengthy history of the case and involved "factual data and scientific test results."

Upon further correspondence, it was learned that KSP "apparently neglected to conduct a search for any documents responsive to two of the requests, and as such, failed to advise that some of the documents did not exist." Further, to invoke KRS 61.878(1)(h), the litigation exception, the Decision noted:

> First, a public agency must establish that it is a law enforcement agency or a public agency involved in administrative adjudication. Next, it must 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. In this matter, the Decision recognized that KSP had successfully met all three parts of the evaluation.

With respect to the employee's records, KSP responded, ultimately, that the technicians had either resigned or retired in the interim and that the agency did not retain the records. Although an agency cannot be required to produce records it does not have, in some cases, failure to maintain a record that it should have might suggest a "rebuttable presumption of records mismanagement." However, upon further review of the applicable records retention schedule, it appeared proper to find that the records were destroyed, although apparently no such record of the destruction existed. With respect to item 4, there had been no proof that KSP should have ever had such a manual and as such, was not in violation.

13-ORD 042 In re: Kenny Goben / Kentucky State Police
Decided March 26, 2013

Goben requested "all drug chemistry notes" that applied to a specific case. KSP denied the request, explaining that the case was an ongoing criminal prosecution by the Louisville Metro PD. The Decision noted that was, in fact, the case and affirmed the denial.

13-ORD-063 In re: Krista A. Dolan / Hopkinsville Police Department
Decided May 1, 2013

Dolan requested records relating to personnel records for three retired Hopkinsville officers who had been involved in the investigation of the Bussell case. This request was in connection to a proceeding for post-conviction relief on Bussell's behalf. The City Clerk invoked KRS 61.878(1)(a), denying access to information such as home addresses, social security numbers, evaluations, marital status and the like. KRS 61.878(1)(k) was also invoked to deny medical records Dolan appealed, solely on the issue of the denial of the performance evaluations. The Decision referenced Cape Publications v. City of Louisville, 191 S.W.3d 10 (Ky. App. 2006), in which it found that such items are not subject to disclosure "without the most pressing of public needs." The Decision emphasized that the disclosure of such records "depends upon the facts of each case." In response, Dolan argued that two of the officers had actually sued Hopkinsville, arguing discriminatory practices, and lawsuits against the same two alleging misconduct. All three were high-ranking officials; one was the Chief.

The Decision noted that simply filing a lawsuit does not forfeit a privacy interest. Further the lawsuit against the officer was filed by Dolan's client, Bussell. Finally, the HPD responded that there were no performance evaluations of the Chief. The Decision agreed that there was no pressing public interest in the content of any of the evaluations and affirmed the denial.

13-ORD-061 In re: Lowell T. Green / Jackson County Sheriff's Department
Decided April 24, 2013

Green requested access to the investigation report of an attempted hit and run in which he was the victim. He received no response to his request and appealed. Neither the agency nor the Sheriff's Office responded to notification of the appeal either. This inaction violated KRS 61.880(1). Accordingly, unless the agency is able to prove by articulating, in writing, a valid reason to deny access, it must provide the documents to Green and until it does so, it is in violation.

13-ORD-074 In re: Terry Whittaker / Elsmere Fire Protection District
Decided May 15, 2013

Whittaker asked to inspect the agency's rules with respect to Open Records, meetings of the board of trustees for the previous ten years, and proof that educational materials with respect to open records and records management had been distributed to board members for the previous six years, along with a myriad of other materials. Counsel responded, noting that it was a voluminous request, and stated that a response would be forthcoming. Further correspondence indicated that Whittaker had advised that the District did have a policy posted, but he noted that it lacked required "office hours and contact information." She expounded upon and clarified her previous request. Receiving no further response, Whittaker appealed. Counsel responded emphatically that personnel records requested were not subject to disclosure and that she had requested not only the file of someone specifically involved in her case, but also others that may or may not have been identified during pending litigation. Counsel also questioned the motivation and timing of the request. The Decision addressed the procedural deficiencies in the agency's response, as the District never explained in detail why the response would be delayed. Although some delay was reasonable, under the circumstances, it noted that the District did not respond to her further request until the appeal was entered. While it was proper to get counsel involved, such policies cannot delay the response. The Decision reiterated the need to adopt rules and post same, and failing to do so constitutes a violation of the Open Records Act.

With respect to the personnel files, the Decision noted that personnel files are not exempted, in their entirety, but must be selectively redacted to exclude only exempt information such as social security numbers.

13-ORD-077 In re: Edward L. Metzger III / Kentucky State Police
Decided May 17, 2013

Metzer, on behalf of a client, Singleton requested all records in the possession of KSP relating to his client, with a specific time frame, particularly with respect to him acting as an informant and tipster. Perkins, on behalf of KSP requested more specificity. Metzger appealed, arguing that his request was sufficiently specific. Perkins responded, noting that KSP was a large agency with multiple locations throughout the state and that "tips given" might involve a variety of records throughout the agency. Further, after a preliminary search, KSP reported it could find no responsive records.

The Decision agreed that although the issue of tips was part of the request, in fact, it was much broader, using the language "includes, but is not limited to." The request "did not describe records by type, origin, county, or any identifier other than relation to a subject." The Decision affirmed the denial.

13-ORD-085 In re: The Daily News / Kentucky State Police
Decided June 5, 2013

Highland (The Daily News) requested access to a closed investigative file regarding Bradshaw (the victim).[1] KSP advised that it was in the process of finalizing its investigation and produced a file with limited information, in which various items were redacted. Highland asked about access to toxicology reports and was told that medical records (which included such reports) were excluded under KRS 61.878(1)(a). Highland appealed, arguing that the circumstances suggested that drug or alcohol use on the part of the victim might be important under the specific facts of the matter, in which the actions of the victim, prior to the shooting, may have played a part. The Decision agreed that there was a compelling public interest in ensuring that KSP thoroughly investigated the matter, and that outweighed the privacy interest asserted by KSP (on behalf of the family).

13-ORD-096 In re: William L. Davis / Lexington-Fayette Urban County Government
Decided June 18, 2013

Davis (an attorney) requested records relating to an incident involving his client, Reynolds. Those documents would include any records of the police department on another individual, LaMarcus (first name) whom Reynolds was accused of being. Upon being asked for more information, he responded that surely the police department knew who LaMarcus was, and had responsive records, since they were seeking him at the time the forced themselves in Reynolds' home. The Decision noted that identifying a person by their first name was not enough for the LFUCG to provide records of the correct person. In addition, it upheld the denial of records from the risk management agency under the doctrine of work product created in anticipation of litigation (KRS 61.878(1)(l)).

13-ORD-093 In re: WBKO / Kentucky State Police
Decided June 14, 2013

Hansen (WBKO) requested a toxicology report on a shooting victim, Bradshaw.[2] . KSP denied under the privacy exemption, KRS 61.878(1)(a). The request noted that the subject's widow had requested such items be held back. The records had previously been released to another news outlet, see above, and under the same reasoning as in that decision, the Decision agreed the toxicology report must be released.

[1] The victim in this case, Bradshaw, was shot and killed by a Warren County Court Security Officer while off-duty and out of his law enforcement jurisdiction.
[2] This report also relates to Brandon Bradshaw.

13-ORD-096 In re: William L. Davis / Lexington-Fayette Urban Count Government
Decided June 18, 2013

Davis requested copies of loss reports, investigation reports and documents from the LFUCG Division of Risk Management claim file, as well as documents from the Police Department, regarding a specific individual (requestor's client). LFUCG denied the claim citing KRS 61.878 (1)(i), (j) and (l), and claiming the items are subject to attorney-client privilege and/or attorney work product. They did offer to provide copies of email and letters to specific city employees. In particular, LFUCG stated they could not provide records for an individual identified only by a first name, as they were unable to identify the individual. Davis argued that the police knew the identify of that individual, because they were searching for him and apparently arrested him. The Attorney General agreed that when a person is identified only by a first name, it was insufficient to enable LFUCG to identify the individual. As such, they did not violate the ORA "by requiring a more precise description."

With respect to the work product doctrine, the Decision agreed that the documents prepared by the Division of Claims Management are prepared in anticipation of litigation, making them work product, as they include the "evaluation, mental impression, conclusions, opinion and legal theories of LFUCG representatives or their agents." In addition, many of the documents are exempt because they are "preliminary drafts or notes," etc.

13-ORD-106 In re: Bryan Price / Lexington-Fayette Urban County Government Division of Police
Decided July 3, 2013

Price requested records for four consecutive years relating to an incident that occurred at a specific location (a Kroger parking lot) connected to Price's vehicle, which he further described specifically by make, model and VIN. The agency responded that the request was vague and unclear, which was later clarified to be because the request was not for any specific documents. Price appealed, focusing his request to two years. The agency responded that since Price is not a complainant in any criminal matter, he was not entitled to a copy of the police report. The Decision agreed the agency's initial response was deficient because it did not indicate that any "reasonable search" was made for possibly responsive records. However, it agreed that once the agency confirmed it had, in fact, done such a search, it correctly notified Price that none were located. An agency is not expected to produce records it does not possess.

13-ORD-108 In re: Lynn Lawrence / Elsmere Fire Protection District
Decided July 10, 2013

Lawrence requested a number of items from the Elsmere FPD, which notified her promptly that the chief and another employee were on vacation until the following week. She received no further response and appealed. A few days later, the FPD did

respond, although it did not apparently provide all requested items. The Decision agreed that the "absence or unavailability of an agency's records custodian does not toll the agency's three business day statutory deadline for response." As such, its response was procedurally deficient.

13-ORD-117 In re: Capitol Radio Traffic Systems, LLC / City of Newport
Decided July 18, 2013

Capitol Radio requested "all accident reports from the Newport Police Department." The request was denied, with the City arguing that the reports were requested for a commercial purpose in violation of KRS 189.635(6). The Decision agreed, in accord with a number of earlier decisions on the same issue, that Capitol Radio is a legitimate newsgathering organization and as such, is noncommercial. (The Decision noted as well that if the City has any direct proof that the company is operated as a commercial business it was subject to a financial penalty for claiming noncommercial status.) Capitol Radio produces daily, live reports to markets throughout the U.S. Pursuant to the results of an investigation provided by a command officer at another police department in the area, which was providing the data to Capitol Radio, Newport argued that they did have such proof, but the Decision disagreed that what was submitted was sufficient to prove a commercial purpose.

13-ORD-127 In re: Marla Wright / Kentucky State Police
Decided August 8, 2013

Wright requested information concerning a NCIC arrest warrant with extradition on herself. KSP denied the request pursuant to KRS 17.150(4), which makes such histories not subject to public inspection. 502 KAR 30:060 also prohibited an agency from confirming or denying the existence or nonexistence of any information to anyone not eligible to receive the information.

The Decision noted that any substantive response to the "loaded question" about the warrant was problematical, because any response at all would violate the regulation. It noted, however, that an administrative regulation cannot go because the law that authorizes it, and "add a requirement not found in the statutes." The Decision agreed that the regulation was, however, appropriate. It looked back to the federal statute and regulation, as well, 28 U.S.C. §534(b) / 20 C.F.R. §20.33(b), and noted that nothing prevents a criminal justice agency from disclosing "public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates." Since Wright was not, however, seeking that type e of information, the Decision agreed that KSP's denial was proper, since to release it would "potentially have jeopardized the KSP's access to NCIC."

13-ORD-145 In re: Thomas Stone / Middletown Fire Protection District
Decided September 4, 2013

Stone requested a number of records from the MFPD, for a period of ten years previous. The first category of the request, regarding personnel records, was denied, with the MFPD advising that it would have to review the files in order to make decisions on redactions and that to do so, would be an unreasonable burden under KRS 61.872(6). It denied other requests by noting it had nothing responsive, and yet others (maintenance records prior to 2008) as having been destroyed pursuant to the records retention schedule. All other records it agreed to produce on a given day. Stone appealed, arguing that he was completely denied the personnel records. He also noted that he asked for original records, not records that were kept electronically, as some of the requested records apparently were now stored. The MFPD asserted that the request was "clearly meant to harass," as Stone had indicated verbally he would drop the request if the MFPD made changes to a fire lane in his community. It also noted that it had never stood in the way of Stone physically accessing the records, and that it would meet his need for an accommodation for a service dog or assistant.

The Decision agreed that it could not find 'clear and convincing evidence" that complying would cause an unreasonable burden, or that Stone was attempting to disrupt the essential functions of the agency. It noted that rarely has it been found that a single records request was enough to invoke KRS 61.872(6), and denial could only be excused when the situation is "extreme and abusive." The MFPD had provided no specific information as to what its "actual burden would be" in producing the requested personnel records, let alone show that it would be unreasonable. A "voluminous request" does not necessarily mean it was "unreasonably burdensome." (Further, it agreed that the request did not include all personnel records, but only those that included certain types of information.)

Specifically, the Decision noted that records must be held in such a way as to "facilitate access." Some of the files with respect to employees no longer with the MFPD had "presumably been destroyed," and other records may be held in a less than efficient manner, complicating the request. Certain information may be redacted, but once that is done, the MFPD must identify the withheld information and explain, in writing, the basis for withholding the excepted material. Once that is done, the remainder of the material must be made available promptly.

13-ORD-147 In re: Jonathan S. Ricketts / Meade County Sheriff's Department
Decided September 10, 2013

Ricketts requested copies of police and EMS runs, photos, radio transmissions, 911 calls and the like with respect to a specific traffic collision. The Meade County Sheriff's Office stated that it could provide the photos (6) for a cost of $10 for a CD. Ricketts argued the cost was too high. The Sheriff's Office argued that the request required them to create the CD. However, the request did not actually specify a format nor did

the agency substantiate the cost of creating the single CD, excluding the cost of the staff time required. The Decision also noted that KRS 189.635, also cited by the Sheriff's Office, concerns only the reports, making "no mention of an investigative materials or photographs." With respect to the records being kept in varying formats (hard-copy / electronic), how the item is to be produced falls to the requestor, not the agency. (If the records are only kept in electronic form, a reasonable fee for reproducing them in that form is allowed, but only a reasonable fee.) The Decision agreed that the cost for a single CD was unlikely to be $10. (The Decision noted that if the photos were considered to be part of the overall accident report, a fee of $5 was set out by law for the entire report, 502 KAR 15.010, including the photos. If not, the fee for producing the CD was restricted to the cost of the actual CD.)

13-ORD-153 In re: Tammy Griffith / McLean County Sheriff's Department
Decided October 2, 2013

Griffith asked for copies of "text messages obtained, included but not limited to those of Jacob Johnson, Jesse Santos, Micah Griffith and Ginger Everly." She later clarified and narrowed the request to a particular cell phone number and two consecutive days, including the day of Micah Griffith's death.[3] In its denial, the agency advised her that they had the text messages but refused to provide them, with an explanation that to do so would be an invasion of privacy. Upon appeal, however, the agency replied that they were not actually in possession of the text messages, although they had subpoenaed them from the phone company. The Decision agreed that the law was correct in that they agency could not of course produce items it did not possess, it was unclear why they did not originally tell Griffith that they did not possess the requested messages. By failing to do so, the agency committed a procedural violation of the ORA.

13-ORD-156 In re: Suzanne D. Cordery / Louisville Metro Police Department
Decided October 4, 2013

Cordery requested a number of documents related to a specific investigation. In a prompt response, LMPD requested additional time (approximately 3 weeks) to respond, citing the scope of the request. LMPD did not detail any specific cause for the delay, however, pursuant to KRS 61.872(5) and thus its response was insufficient. In its ultimate response, LMPD noted that it had no records responsive to several of the requests. In particular, one request was for records of others who had made a request for specific data, to which the agency responded that it kept no database of such requests – and that to locate such records would require a hand-search through all open records requests. Subsequently, however, the agency responded that it had nothing responsive to that request, either.

The Decision found that only a procedural violation occurred due to the long delay in responding.

[3] Micah Griffith died of a gunshot wound to the head on April 20, 2013, possibly accidentally self-inflicted. The case was still under investigation at the time, however.

13-ORD-157 In re: Lawrence Trageser / Office of the Spencer County Sheriff
Decided October 4, 2013

Trageser requested records reflecting the names of everyone deputized by the current Sheriff (Donald Stump) from 2011 to the current date. The request was denied, with the Sheriff advising Trageser that there were no responsive records. Trageser appealed and produced other records that identified deputies by name. Sheriff Stump argued that he "does not deputize anyone," but instead, that a District or Circuit court Judge administers the actual oath. On further appeal, Trageser argued that he was using the term "deputize" in the ordinary meaning. The Decision agreed, holding that release of the names of all persons authorized as deputies was required.

13-ORD-161 In re: Richard Clay / Kentucky State Police
Decided October 10, 2013

Clay requested dispatch logs, recordings and any investigative reports concerning a specific incident. Initially KSP denied the data, asserting that the request was not sufficiently specific as to the time it occurred. In response, Clay appealed, noting that his request concerned only a specific post and was limited to a 12-hour period of time. In its response, KSP acknowledged that it had not attempted to comply with the request for dispatch records. It denied, however, that it did not look for an investigative report, noting that the date of the incident was July 14, the request was dated July 17 and the response was dated July 24. Troopers have ten days to submit the initial report and the report had not been completed at the date of the initial request. It indicated it would mail the report immediately, thereby mooting the complaint.

The Decision agreed that the initial denial was appropriate since, although the request was directed to Post 7, it did not specific limit the request to that post, nor did it limit the request to the incident in question. As such, KSP was require to interpret the request broadly and given the number of responsive records, it was proper to deny it initially.

13-ORD-164 In re: Jeff Lawless / Lexington-Fayette Urban County Government
Decided October 16, 2013

Lawless requested from LFUCG records of pawn shop transaction records related to two named individuals. The Division of Police responded to the request by stating that it did not have physical documents and referring him to the pawn shops themselves. Upon appeal of the denial, Lawless noted that when he made the requests to the pawn shops, he was referred to the Division of Police, since "they are the ones requiring the pawn shops to provide the data." The data was actually, apparently, stored on an internal service (LeadsOnline.com). The Decision agreed that the "transactional information furnished by pawnbrokers" under penalty of law, was a record of the Division of Police. The fact that the Division had "elected to outsource records maintenance and retrieval functions with a private vendor" is immaterial. Ownership of the data collected remains with the LFUCG.

However, Lawless was foreclosed from the records pursuant to the Gramm-Leach-Bliley Act[4] which classifies pawnbrokers as "financial institutions." As such, it was proper to withhold this data from the requestor.

13-ORD-167 In re: William L. Davis / Office of the Fayette County Sheriff
Decided October 17, 2013

Davis requested records relating to an incident involving his client, on a specific date at a specific location. The Sheriff's Office did not respond, and later asserted that it did not receive the initial request. Upon appeal, the Sheriff notified Davis that it would immediately search for responsive records, and did so. One record was located and produced, but the Sheriff's Office failed to notify the Attorney General that the item had been produced. Upon follow-up, Davis advised that he was dissatisfied with the response, believing that additional items existed responsive to his request. The Sheriff's Office detailed its involvement in the matter, which was primarily under the Lexington Division of Police, and listed the methods it had used to locate any records related to the incident it might hold. The Decision found it plausible that considering its limited involving in assisting other agency, it may not have done any "extensive recordkeeping."

However, because the one document the Sheriff's Office produced, a "general order" which required that the agency develop a report on every incident in which a deputy is involved, Davis was entitled to a written explanation as to why no report was generated in the incident his client was involved.

13-ORD-192 In re: Tommy Southard / Kentucky State Police
Decided November 19, 2013

Southard requested records by the name of the involved party. KSP responded it could not search for records internally in that way, as the storage location is "largely based upon the date and location of the incident."[5] The Decision upheld KSP's denial.

13-ORD-195 In re: Coy Travis / Office of the Attorney General
Decided November 25, 2013

Travis requested records from the Office of Medicaid Fraud and Abuse Control (OMF) concerning investigations and enforcement actions. The response indicated that information concerning an alleged offender is confidential under KRS 878(1)(l) and KRS 205.8465(4). The Decision noted that the purported confidentiality provisions of the latter statute was "ambiguously drafted," although clearly, "some sort of confidentiality is contemplated." Since any claim for confidentiality under the ORA must be "strictly

[4] 15 U.S.C. §6801 *et seq.*, also known as the Financial Services Modernization Act of 1999 and the Financial Privacy Rule, incorporated into the Open Records Act by KRS 61.878(1)(k),

[5] KSP noted that it did not, and could not, legally use NCIC/LINK to locate records as the user agreements under LINK/CJIS prohibited it under the authority of 28 C.F.R. §20.

construed," the Decision agreed that there was only a limited bar to releasing certain information, not a complete bar, and that information could only be denied when assessed under the exceptions listed in the ORA.

13-ORD-202 In re: Marvin Phipps / Kentucky State Police
Decided December 5, 2013

Phipps requested statistics identifying information regarding the Sex Offender Registry, specifically, the number of individual who reported they'd been threatened by their inclusion on the registry and/or who have been victims of assault or homicide since their inclusion. KSP responded that it was not obligated to honor a request for information, as opposed to a request for a public record. Phipps appealed, noting that since KSP has statistical data for other offenses, it questioned their inability to produce the information. The Decision upheld KSP's denial.

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.