

Department of
CRIMINAL JUSTICE TRAINING

KENTUCKY JUSTICE AND PUBLIC SAFETY CABINET



2020
DECISIONS OF THE ATTORNEY
GENERAL
OPEN RECORDS



ACCREDITED BY



2020

Decisions of the Attorney General

Open Records

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

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

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

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

KENTUCKY
Open Records Statutes
Updated through 2020

61.870 Definitions for KRS 61.872 to 61.884

(1) "Public agency" means:

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

are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned or maintained by or for a body referred to in subsection (1)(h) of this section that are not related to functions, activities, programs, or operations funded by state or local authority;

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

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

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

(b) "Commercial purpose" shall not include:

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

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

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

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

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

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

Effective: July 15, 2016

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

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

Effective: July 14, 1992

61.8715 Legislative findings

The General Assembly finds an essential relationship between the intent of this chapter and that of [KRS 171.410](#) to [171.740](#), dealing with the management of public records, and of [KRS 11.501](#) to [11.517](#), [45.253](#), [171.420](#), [186A.040](#), [186A.285](#), and [194B.102](#), dealing with the coordination of strategic planning for computerized information systems in state government; and that to ensure the efficient administration of government and to provide accountability of government activities, public agencies are required to manage and maintain their records according to the requirements of these statutes. The General Assembly further recognizes that while all government agency records are public records for the purpose of their management, not all these records are required to be open to public access, as defined in this chapter, some being exempt under [KRS 61.878](#).

Effective: June 25, 2009

61.872 Right to inspection; limitation

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

(2) Any person shall have the right to inspect public records. The official custodian may require:

(a) written application, signed by the applicant and with his name printed legibly on the application, describing the records to be inspected. The application shall be hand delivered, mailed, or sent via facsimile to the public agency.

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

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

(3) A person may inspect the public records:

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

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

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

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

(6) If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies

thereof. However, refusal under this section shall be sustained by clear and convincing evidence.

Effective: June 27, 2019

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

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

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

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

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

an individual or a group, the public agency may at its discretion provide the requested format and recover staff costs as well as any actual costs incurred.

(4) (a) Unless an enactment of the General Assembly prohibits the disclosure of public records to persons who intend to use them for commercial purposes, if copies of nonexempt public records are requested for commercial purposes, the public agency may establish a reasonable fee.

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

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

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

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

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

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

(c) Noncommercial purpose, if the person uses or knowingly allows the use of the public record for a commercial purpose. A newspaper, periodical, radio or television station shall not be held to have used or knowingly allowed the use of the public record for a commercial purpose merely because of its publication or broadcast, unless it has also given its express permission for that commercial use.

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

(a) The cost of physical connection to the system and reasonable cost of computer time access charges; and

(b) If the records are requested for a commercial purpose, a reasonable fee based on the factors set forth in subsection (4) of this section.

Effective: July 15, 1994

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

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

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

Effective: July 15, 1994

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

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

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

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

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

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

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

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

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

Effective: July 15, 2016

61.876 Agency to adopt rules and regulations

(1) Each public agency shall adopt rules and regulations in conformity with the provisions of [KRS 61.870](#) to [61.884](#) to provide full access to public records, to protect public records from damage and disorganization, to prevent excessive disruption of its essential functions, to provide assistance and information upon request and to insure efficient and timely action in response to application for inspection, and such rules and regulations shall include, but shall not be limited to:

- (a) The principal office of the public agency and its regular office hours;
- (b) The title and address of the official custodian of the public agency's records;
- (c) The fees, to the extent authorized by [KRS 61.874](#) or other statute, charged for copies;
- (d) The procedures to be followed in requesting public records.

(2) Each public agency shall display a copy of its rules and regulations pertaining to public records in a prominent location accessible to the public.

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

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

61.878 Certain public records exempted from inspection except on order of court; restriction of state employees to inspect personnel files prohibited

(1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:

- (a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;
- (b) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the

disclosure or publication of which is directed by another statute;

(c) 1. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;

2. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:

a. In conjunction with an application for or the administration of a loan or grant;

b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;

c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or

d. For the grant or review of a license to do business.

3. The exemptions provided for in subparagraphs 1. and 2. of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;

(d) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;

(e) Public records which are developed by an agency in conjunction with the regulation or supervision of financial institutions, including but not limited to, banks, savings and loan associations, and credit unions, which disclose the agency's internal examining or audit criteria and related analytical methods;

(f) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has

been acquired. The law of eminent domain shall not be affected by this provision;

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again;

(h) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;

(i) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;

(j) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;

(k) All public records or information the disclosure of which is prohibited by federal law or regulation;

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

(m) 1. Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:

a. Criticality lists resulting from consequence assessments;

b. Vulnerability assessments;

c. Antiterrorism protective measures and plans;

d. Counterterrorism measures and plans;

e. Security and response needs assessments;

f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;

g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency; and

h. Records when their disclosure will expose a vulnerability referred to in this subparagraph and that describe the exact physical location of hazardous chemical, radiological, or biological materials.

2. As used in this paragraph, "terrorist act" means a criminal act intended to:

a. Intimidate or coerce a public agency or all or part of the civilian population;

b. Disrupt a system identified in subparagraph 1.f. of this paragraph; or

c. Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.

3. On the same day that a public agency denies a request to inspect a public record for a reason identified in this paragraph, that public agency shall forward a copy of the written denial of the request, referred to in KRS 61.880(1), to the executive director of the Kentucky Office of Homeland Security and the Attorney General.

4. Nothing in this paragraph shall affect the obligations of a public agency with respect to disclosure and availability of public records under state environmental, health, and safety programs.

5. The exemption established in this paragraph shall not apply when a member of the Kentucky General Assembly seeks to inspect a public record identified in this paragraph under the Open Records Law; and

(n) Public or private records, including books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, having historic, literary, artistic, or commemorative value accepted by the archivist of a public university, museum, or government depository from a donor or

depositor other than a public agency. This exemption shall apply to the extent that nondisclosure is requested in writing by the donor or depositor of such records, but shall not apply to records the disclosure or publication of which is mandated by another statute or by federal law.

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

1. A contract is awarded.

2. The procurement process is canceled without award of a contract and there is a determination that the contract will not be resolicited; and

(p) Communications of a purely personal nature unrelated to any governmental function.

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

(3) No exemption in this section shall be construed to deny, abridge, or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him. The records shall include, but not be limited to, work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, lay-offs, disciplinary actions, examination scores, and preliminary and other supporting documentation. A public agency employee, including university employees, applicant, or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.

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

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

Effective: June 27, 2019

61.880 Denial of inspection; role of Attorney General

(1) If a person enforces [KRS 61.870](#) to [61.884](#) pursuant to this section, he shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section. Each public agency, upon any request for records made under [KRS 61.870](#) to [61.884](#), shall determine

within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the three (3) day period, of its decision. An agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his authority, and it shall constitute final agency action.

(2) (a) If a complaining party wishes the Attorney General to review a public agency's denial of a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection. If the public agency refuses to provide a written response, a complaining party shall provide a copy of the written request. The Attorney General shall review the request and denial and issue within twenty (20) days, excepting Saturdays, Sundays and legal holidays, a written decision stating whether the agency violated provisions of [KRS 61.870](#) to [61.884](#).

(b) In unusual circumstances, the Attorney General may extend the twenty (20) day time limit by sending written notice to the complaining party and a copy to the denying agency, setting forth the reasons for the extension, and the day on which a decision is expected to be issued, which shall not exceed an additional thirty (30) work days, excepting Saturdays, Sundays, and legal holidays. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper resolution of an appeal:

1. The need to obtain additional documentation from the agency or a copy of the records involved;
2. The need to conduct extensive research on issues of first impression; or
3. An unmanageable increase in the number of appeals received by the Attorney General.

(c) On the day that the Attorney General renders his decision, he shall mail a copy to the agency and a copy to the person who requested the record in question. The burden of proof in sustaining the action shall rest with the agency, and the Attorney General may request additional documentation from the agency for substantiation. The Attorney General may also request a copy of the records involved but they shall not be disclosed.

(3) Each agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding the enforcement of [KRS 61.870](#) to [61.884](#). The Attorney General shall not, however, be named as a party in any Circuit Court actions regarding the enforcement of [KRS 61.870](#) to [61.884](#), nor shall he have any duty to defend his decision in Circuit Court or any subsequent proceedings.

(4) If a person feels the intent of [KRS 61.870](#) to [61.884](#) is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees or the misdirection of the applicant, the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.

(5) (a) A party shall have thirty (30) days from the day that the Attorney General renders his decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under [KRS 61.882](#).

(b) If an appeal is not filed within the thirty (30) day time limit, the Attorney General's decision shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained.

Effective: July 15, 1994

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

(1) The Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained shall have jurisdiction to enforce the provisions of [KRS 61.870](#) to [61.884](#), by injunction or other appropriate order on application of any person.

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

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

order of the court may be punished as contempt of court.

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

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

Effective: July 14, 1992

61.884 Person's access to record relating to him

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

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

**2020 OPINIONS OF THE ATTORNEY GENERAL
OPEN RECORDS
SELECTED SUMMARIES**

20-ORD-002 **In re: Kathleen McIntosh/Kentucky State Police**

Issue: Whether or not the Kentucky State Police violated The Open Records Act in denying a request for all reports and uniform citations pertaining to a specified case in which KSP had not declined prosecution.

Argument: KSP argued the records are part of an ongoing investigation and exempt under the Open Records Act.

Summary: KSP did not violate the Open Records Act because it ultimately provided a specific reason to justify its denial as to any existing reports since the investigation was ongoing. Additionally, KSP cannot provide any citations as none exist relevant to the matter at hand.

2020-ORD-005 **In re: David Raper/Kentucky State Police**

Issue: Whether or not KSP violated the Open Records Act in denying a request for records, wherein the requestor asked for records including photographs involved in an extortion case.

Argument: The requested photograph is private in nature and would be an unwarranted intrusion into personal privacy.

Summary: KSP did not violate the Open Records Act in denying the request for the photograph. The requested photograph was private in nature and it had no manifest bearing on how KSP discharged its duty while carrying out the investigation. The interest in privacy outweighs public access in this matter.

2020-ORD-007 **In re: WAVE3 News/Louisville Metro Police Department**

Issue: Whether or not Louisville Metro properly denied a request for a copy of a Professional Standards Unit document titled “Preliminary Summary Findings and Conclusions” relating to a specific officer.

Argument: Louisville Metro withheld the records stating the items were preliminary in nature therefore exempt from disclosure under the Open Records Act.

Summary: KSP did not violate the Open Records Act by denying the request for the Preliminary Summary Findings and Conclusion document even though the officer at issue resigned prior to any findings. The document did not lose its preliminary character because it was not adopted as the basis for the final agency action.

2020-ORD-010 **In re: Lawrence Trageser/Kentucky State Police**

Issue: Whether or not KSP violated the Open Records Act in denying a request for the personnel file of a KSP employee.

Argument: No such records existed since KSP did not employ anyone by the name listed in the request.

Summary: KSP did not violate the Open Records Act. It conducted a good faith search for the responsive records and provided the requestor with any responsive records it located.

2020-ORD-025 **In re: Lawrence Trageser/Kentucky State Police**

Issue: Whether or not KSP violated the Open Records Act by failing to comply with a broad request for CAD reports for all first responders in Spencer County on a particular date.

Argument: KSP argued the request failed to precisely describe the record sought and amounted to an unreasonable burden because it would yield thousands of pages of documents.

Summary: KSP did not violate the request since the requestor did not precisely describe the documents sought.

2020-ORD-047 **Heather Richards/Louisville Metro Police Department**

Issue: Whether or not LMPD violated the Open Records Act in failing to provide copies of the entire requested case file.

Argument: LMPD first argued the records requested for preliminary in nature. Upon the subsequent requests, LMPD stated there was a technical malfunction regarding requested recordings.

Summary: LMPD violated the Open Records Act in its untimely disposition of the request for records. LMPD's explanation regarding a technical malfunction was sufficient to explain the partial nonexistence of a video recording.

20-ORD-063 In re: Shayla Kilburn/Kentucky State Police

Issue: Whether or not KSP violated the Open Records Act by redacting a phone number from a dispatch report.

Argument: KSP stated that the redaction was made under KRS 61.878(1)(a) and *Zink v. Commonwealth*, 902 S.W.2d 825 (Ky. App. 1994), and explained that releasing the personal identifying information of the caller, "may leave persons at risk for identity theft."

Summary: Here, the personal telephone number contained in the CAD report will do little to serve the public purpose of ensuring KSP is executing its statutory duties. Accordingly, KSP did not violate the Act.

20-ORD-065 In re: James Harrison/Kentucky State Police

Issue: Whether The Kentucky State Police violated the Open Records Act in failing to timely respond to a request for records and in denying the request.

Argument: KSP argued the release of the remaining records would harm the investigation by revealing information that may influence witness statements or testimony.

Summary: KSP violated the Open Records Act by failing to respond to the request within three days; however, KSP did not violate the Act by denying the request. Since the matter still could be prosecuted, the information is exempt from disclosure.

20-ORD-075

In re: Hanif Yazid/Kentucky State Police

Issue:

Whether the Open Records Act requires an agency to respond to a request for an officer's badge number.

Argument:

KSP claims The Open Records Act does not require public agencies to fulfill requests for information, but only requests for records. KSP argues the request for badge numbers is a request for information.

Summary:

KSP did not violate the Open Records Act by failing to provide the requested badge numbers as the request was for information and not a specifically described public record. KSP did violate the Act by failing to respond to the request within three days of receipt.

20-ORD-076

In re: Gerald West/Newport Police Department

Issue:

Whether or not Newport Police Department violated the Open Records Act by failing to respond to Open Records request within three days.

Argument:

Newport Police did not originally receive the request, and when they received the second request additional time was needed to locate the items due to staffing shortages caused by Covid 19.

Summary:

NPD violated the Act by failing to issue a timely written response to the requests. The three day statutory time frame was expanded to ten days from receipt by Senate Bill 150 due to Covid 19. In this matter, Newport did not respond for at least 17 days in violation of the Act and SB 150.

20-ORD-102**In re: Tyler Fryman/Kentucky State Police****Issue:**

Whether KSP violated the Open Records Act by failing to provide requested drone video footage and redacting the drone pilot's birth year on the copy of the drone pilot's license.

Argument:

KSP waited two months to provide some of the requested documents. Additionally, KSP should have produced video footage and the birth year listed on the drone pilot's license.

Summary:

KSP violated the Act by failing to respond to the request for records within the ten day expanded period under SB 150. KSP did not possess any footage of the drone, thus, it cannot produce something it does not possess. Finally, KSP did not violate the Act in failing to produce the birth year listed on the drone pilot's license. Agencies are permitted to protect privacy interests while balancing those interests with the public's right to know information.

20-ORD-104**In re: *The Courier Journal*/Louisville Metro Police Department****Issue:**

Whether or not Louisville Metro Police Department violated the Open Records Act by denying a request for the "full investigative file" relating to dismissed charges against Kenneth Walker.

Argument:

In its response to the request, Louisville Metro Police Department denied the request pursuant to KRS 61.878(1)(h) and KRS 17.150. Louisville Metro Police Department stated the investigation involving Mr. Walker is ongoing and that no decision has been made regarding prosecution. The Department further explained, the investigative file is closely related to the ongoing Professional Integrity Unit investigation into an officer-involved shooting.

Summary:

Louisville Metro Police Department did not violate the Open Records Act in denying a request for the "full investigative file" relating to dismissed charges against Kenneth Walker. The Department justified its reliance on KRS 17.150(2)(d) to withhold the investigating file because disclosure would reveal information pertaining to prospective law enforcement actions.

20-ORD-107

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

Issue: Whether or not Louisville Metro Police Department violated the Open Records Act by denying requests for administrative incident reports and body camera footage under KRS 17.150(2).

Argument: Louisville Metro Police denied the request by stating the documents relate to an ongoing investigation by the Public Integrity Unit. Additionally, premature release of information could prejudice witnesses and color their recollection of events.

Summary: The Louisville Police Department did not violate the Open Records Act by denying requests for administrative reports and body camera footage. The Department was able to show disclosure would impede pending investigations by the FBI and Office of the Attorney General.

20-ORD-110

In re: Sarah Farley/Lexington Police Department

Issue: Whether or not The Lexington Police Department violated the Open Records Act by failing to explain the application of claimed exemptions to a request for records and text messages.

Argument: Lexington Police Department claims and email and attachment are preliminary in nature and is exempt from disclosure.

Summary: Lexington Police Department violated the Open Records Act by failing to explain how the claimed exemption applied to the requested email and attachment.

20-ORD-114

In re: Scott Horn/Lexington Police Department

Issue: Whether or not Lexington Police violated the Open Records Act by claiming exemptions to the Open Records Act regarding requested body camera footage protestors and any arrests made of the protestors without stating if it searched for the requested footage prior to claiming the exemptions.

Argument: Lexington Police Department stated the exemptions applied if the requested footage exists rather than the footage existed and it possessed the footage.

Summary: The Lexington Police Department violated the Open Records Act by failing to state affirmatively that it searched for the requested footage. Upon finding the footage, the Lexington Police Department correctly cited exemptions.

20-ORD-122 **In re: Lee Metzger/Kentucky State Police**

Issue: Whether or not KSP violated the Open Records Act in denying an Open Records request for a dispatch log and incident report.

Argument: KSP denied the request for both records saying they both pertained to an ongoing investigation and were exempt from disclosure.

Summary: KSP violated the Open Records Act in failing to turn over the incident report as such reports are not intelligence or investigative in nature and merely contain information documenting the report of a crime and the police response. However, KSP did not violate the Open Records Act in refusing to release the dispatch log since it does pertain to an ongoing investigation and is considered to be an investigative and/or intelligence report.

20-ORD-124: **In re: Joshua Powell/Lexington Police Department**

Issue: Whether or not the Lexington Police Department violated the Open Records Act by failing to allow in person inspection of records due to Covid 19.

Argument: SB 150 extended the time of response to an Open Records request to ten (10) days from three (3) and permitted the denial of in person record inspections until the state of emergency ceases.

Summary: The Lexington Police Department did not violate the Open Records Act by denying in person inspection of requested records. The denial was permitted by SB 150.

20-ORD-128 **In re: Brennan Crain/Kentucky State Police**

Issue: Whether or not KSP violated the Open Records Act in denying a request to view records relating to an altercation leading to death between an officer and a citizen. The record included a medical examiner's report, video footage and dispatch reports.

Argument: KSP argued the records were part of an ongoing investigation and exempt from disclosure.

Summary: KSP did not violate the Open Records Act by withholding the requested documents and footage. The matter is an ongoing investigation, and a decision to prosecute the matter has not been made. Thus, the records are exempt.

20-ORD-131

In re: Sam Aguiar/Louisville Metro Police Department

Issue: Whether or not Louisville Metro Police Department violated the Open Records Act by failing to produce requested documents including recordings of radio communication related to the execution of two search warrants, Risk Assessment Matrix forms, and MDT communication data.

Argument: Louisville Metro Police Department claims the documents are part of an ongoing investigation and are exempt from disclosure under the Open Records Act.

Summary: Louisville Metro Police Department violated the Open Records Act by failing to fully respond to the request, but was correct in withholding the requested items due to the possibility disclosure could impede the ongoing investigation.

20-ORD-138

In re: *The State Journal*/Kentucky State Police

Issue: Whether or not Kentucky State Police violated the Open Records Act by denying a request for a specified incident report solely because it related to ongoing investigation.

Argument: Kentucky State Police claim the report is exempt Under KRS 17.150 as “premature release of any records related to an ongoing investigation in a public forum could result in prejudice to the witnesses and may adversely affect their recollection of the events.”

Summary: Incident reports of this nature are not investigative reports and are not exempt from disclosure under KRS. 17.150. Generally, police incident reports or initial offense reports that do not contain information that would compromise the ongoing investigation are not considered exempt from disclosure.

20-ORD-142 **In re: Jacob Ryan/Louisville Metro Police Department**

Issue: Whether or not Louisville Metro Police Department violated the Open Records Act by denying a request for Incident Action Plan, rules of conduct, [and] After-Action Report completed or compiled in relation to protest events between” May 28 and June 1, 2020.

Argument: Louisville Metro claim the requested document are exempt and that the After-Action Report does not exist. The records contain strategies, proposed medical routes, gathering places for LMPD and other tactical and operational information. If this information is released, it could place personnel in harm’s way.

Summary: Louisville Metro Police Department met its burden to show that Incident Action Plans were “antiterrorism protective measures and plans” under KRS 61.878(1)(m)1.c and that their disclosure would have a reasonable likelihood of threatening public safety by exposing vulnerabilities in the Department’s potential response to protests that turn violent. Louisville Metro did not violate the Open Records Act by failing to provide records that did not exist.

20-ORD-152 **In re: Sam Aguiar/Louisville Metro Police Department**

Issue: Whether the Louisville Metro Police Department violated the Open Records Act when it failed to cite an exception for redactions made in records it produced for inspection.

Argument: The Louisville Police Department argued disclosing home addresses and secondary employment information for officers would be sharing information of a personal nature. Thus, the Department claims this information is exempt pursuant to KRS 61.878(1)(a).

Summary: The Louisville Police Department did not violate the Open Records Act by redacting officers' home addresses; however, the Act was violated when the secondary employment information was redacted. Information regarding secondary employment is considered information of a personal nature.

20-ORD-156 In re: WDRB News/Louisville Metro Police Department

Issue: Whether or not Louisville Metro Police Department violated the Open Records Act in its delayed response and denial of a request for Incident Action Plans, After-Action Reports and other administrative records.

Argument: The Department claimed the requested documents were exempt as the documents contain information that would put the law enforcement personnel at risk if released to the public.

Summary: The Louisville Police Department did not err in not disclosing the requested documents. The Department was able to show the Incident-Action plans antiterrorism protective measures and disclosure of same would have a reasonable likelihood of threatening public safety. The requested administrative documents were exempt from disclosure as they were part of an ongoing police investigation.

20-ORD-199 In re: Levi Henson/Richmond Police Department

Issue: Whether the Richmond Police Department violated the Open Records Act when it invoked an inapplicable exemption and failed to search for the requested records.

Argument: Richmond Police denied the request stating the victim was a juvenile at the time and most records from that time period were destroyed by a flood.

Summary: Richmond Police Department violated the Open Records Act by failing to search for responsive records and by claiming the records were exempt from disclosure because the victim was a juvenile at the time of the crime. The exception pertaining to juveniles only pertains to juvenile criminal defendants and not to victims.