

THE KENTUCKY OPEN RECORDS ACT KRS 61.870- KRS 61.884



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Policy of Open Records Act

- ▣ Free and open examination of public records is in the public interest.
- ▣ Exceptions shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.



WHO, WHAT and WHY?

- ▣ **WHO** can request a public records?
Anyone
- ▣ **WHAT** records shall be open for inspection?
All public records
- ▣ **WHY** does someone want to review or copy a public record?
Does not matter and is legally irrelevant to the agency's obligation to provide record.



PUBLIC RECORDS

“all means all”

- ▣ All books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation
- ▣ Regardless of physical form or characteristics
- ▣ Prepared, owned, used, in the possession of or retained by a public agency
- ▣ Including: Emails, text messages, tweets, facebook pages



GENERAL REQUIREMENTS

- ▣ Suitable Facilities
- ▣ Time for Inspection-
 - during regular business hours
- ▣ Official Custodian – in charge of records
 - there must be one
- ▣ Generally requester can be required to review documents before copying or mailing



REQUEST

- ▣ REQUEST TO INSPECT RECORDS
 - Must be in Writing
 - Directed to Official Custodian
 - Signed by Requestor and with name printed legibly
 - Describing Records



RESPONSE

- ▣ RESPONSE TO REQUEST
 - MUST BE IN WRITING
 - Within three (3) business days – a must
 - If request will be honored, a statement that Agency will comply
 - If there will be a delay – detailed explanation why
 - If request is denied, cite specific statutory exception and brief explanation of why applies



EXEMPTIONS

KRS 61.878

- ▣ Contain information of a personal nature
 - KRS 61.878(1)(a)
- ▣ Confidential or proprietary records
 - KRS 61.878(1)(c)
- ▣ Prospective location of a business or industry
 - KRS 61.878(1)(d)
- ▣ Records involving an ongoing law enforcement or administrative investigation
 - KRS 61.878(1)(h)



EXEMPTIONS

KRS 61.878

- ▣ Preliminary drafts, notes, correspondence with private individuals
 - KRS 61.878(1)(i)
- ▣ Preliminary recommendations, and preliminary memorandum
 - KRS 61.878(1)(j)
- ▣ Public records or information made confidential by enactment of the General Assembly or Federal legislation
 - KRS 61.878(1)(k)(1)



Duty to Redact

- ▣ If any public record contains both exempt and non-exempt material , the public agency shall separate the excepted and make the non-excepted material available for examination



CLAIMING EXEMPTIONS

- ▣ Most exemptions discretionary and can be waived.
- ▣ Cite specific statutory exemption section(s) that apply
- ▣ Provide explanation of how exemption applies to the records being claimed exempt
- ▣ Seek advice if unsure if exemption applies or not



TROUBLESHOOTING

- ▣ REVIEW OPEN RECORDS RULES AND REGULATIONS
- ▣ MAINTAIN AND ORGANIZE RECORDS THAT CAN BE EASILY SEARCHED
- ▣ TIMELY RESPOND TO REQUEST
- ▣ REVIEW CONTENT OF RECORDS AND ID ANY DOCUMENTS TO BE WITHHELD
- ▣ STATE STATUTORY EXCEPTION AND GIVE EXPLANATION OF HOW EXCEPTION APPLIES
- ▣ SEEK ADVICE

INFORMATION

- ▣ Kentucky Attorney General "Your Duty under the Law"
- ▣ http://ag.ky.gov/NR/rdonlyres/DDB68390-D61F-4771-96D0-32A3DB794710/0/YourDutyUndertheLaw_708_.pdf

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