



Kentucky Open Records Act

Morgain M. Patterson
KLC Director of Municipal Law

Open Records Gone Wild

1. What plans are in place to protect the town from a dragon attack? (Wigan Council)
2. Please list all the types of animals you have frozen since March 2012, including the type and quantity of each animal? (Cambridge City Council)
3. How many times has the council paid for the services of an exorcist, psychic or religious healer? Were the services performed on an adult, child, pet or building? (Rossendale Council)
4. How many people in the town have a licence to keep a tiger, lion, leopard, lynx or panther as a pet? (Scarborough Council)
5. How many children in the care of the council have been micro-chipped? (Southend Council)

What are we learning today?



WHAT?



HOW?



WHEN?



WHO?

Open Records Act

- General Rule: The General Assembly recognized free and open examination of public records is in the public interest. All **public records of public agencies** must be open for inspection for **Kentucky residents**.
- Exception: Except for when the General Assembly says they're not (exemptions).

What is a public agency?

“Public agency” means:

- **local government officer;**
- **local government department, division, bureau, board, commission, and authority;**
- **local legislative board, commission, committee, and officer;**
- **city governing body, council,** school district board, special district board, and **municipal corporation;**
- **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;**

What is a public agency?

- Any **body created** by **local authority** in any branch of government;
- Entity **where the majority of its governing body is appointed** by a public agency as defined in the statute
- 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
- Any **interagency body of two (2) or more public agencies**

Who is a Kentucky resident?

Residents of the Commonwealth include:

- (a) An individual residing in the Commonwealth;
- (b) A domestic business entity with a location in the Commonwealth;
- (c) A foreign business entity registered with the Secretary of State;
- (d) An individual that is employed and works at a location or locations within the Commonwealth;
- (e) An individual or business entity that owns real property within the Commonwealth;
- (f) An individual or business entity that has been authorized to act on behalf of an individual or business entity defined in paragraphs (a) to (e) of this subsection; or
- (g) A news-gathering organization as defined in KRS 189.635(8)(b)1.a. to e.

HOW DO I KNOW?

The official custodian may require the applicant to provide a statement in the written application of the manner in which the applicant is a resident of the Commonwealth under KRS 61.870(10)(a) to (f).

How Kentucky Are You?

Each item = 1 point

- Eaten at the first KFC in Corbin, KY?
- Tried all three flavors of Ale-8-one?
- Worn jorts in January?
- Eaten a Hot Brown?
- Know what Burgoo tastes like?
- Hiked in the Red River Gorge with a slice of Miguel's pizza?
- Own a Ky for Ky t-shirt?
- Swam in Herrington, Cumberland, Laurel or Kentucky Lake?
- Know the difference between Bourbon and whiskey?
- Explored Mammoth Cave?
- Placed a bet on a horse race?
- Hiked on the Bourbon Trail?
- Say "Y'all" instead of "You All?"
- Visited Abraham Lincoln's birthplace in Hodgenville?
- Played Cornhole?
- Been Snipe hunting?
- Use "holler" as a noun?
- Had a smashburger and a large cherry pepsi at Dairy Cheer in Prestonsburg?
- Attended the Kentucky Derby?
- Have a Kentucky themed tattoo?
- Able to fill in a map of Kentucky with all 120 counties?
- Still hate Christian Laettner?

Add up your score. How did you do?

0-5

Visit more often!

6-10

You're well on your way.

11-15

You see the shape of

16+

Literally a descendant of

KENTUCKY We are proud of you!

KY in everyday objects.

Daniel Boone

What is a public record?

- Books
- Papers
- Maps
- Photographs
- Cards
- Tapes
- Discs
- Diskettes
- Recordings
- Software
- Other documentation regardless of physical form or characteristic.



Requests to Inspect

Directed to the official custodian

Written application may be:

- Hand delivered;
- Mailed;
- Sent via facsimile; or
- Sent via e-mail to official custodian of records

* A public agency shall not require the use of any particular form for the submission of a request but shall accept the standardized form created by the Attorney General.

Open Records Policy

- Every public agency must adopt rules and regulations to provide full access to public records. (KRS 61.876)
- Prominently displayed (and on website); accessible to the public and must contain:



Principal Office



Office Hours



**Title and address
of official
custodian**



Copy Fees



Procedures

Procedures for Inspection

Entitled to suitable facility and necessary equipment for inspection

May inspect during regular office hours

If requested, public agency must mail copies if:

- Out-of-county resident
- Precisely describes records
- Readily available
- Advance fee payment, if required

Fees for Copies

- May charge a reasonable fee (\$0.10)
- May not exceed actual cost
- May not include cost of staff time
 - Exception: Discretionary Tailored Format
 - Exception: Commercial Purpose



Application to wrong agency

Do:

- Notify the applicant
- Furnish name and location of appropriate agency, if known

Don't:



Responding to requests

- In writing
- Within five business days
- Indicate whether public agency will comply
- If cannot provide records in 5 days:
 - Explain why (active use, storage, etc.)
 - Give date, time, place of availability

Grounds for Denial

- Records **does not exist**
- **Unreasonable burden**
- **Repeated requests intended to disrupt essential functions**
- **Exemptions**

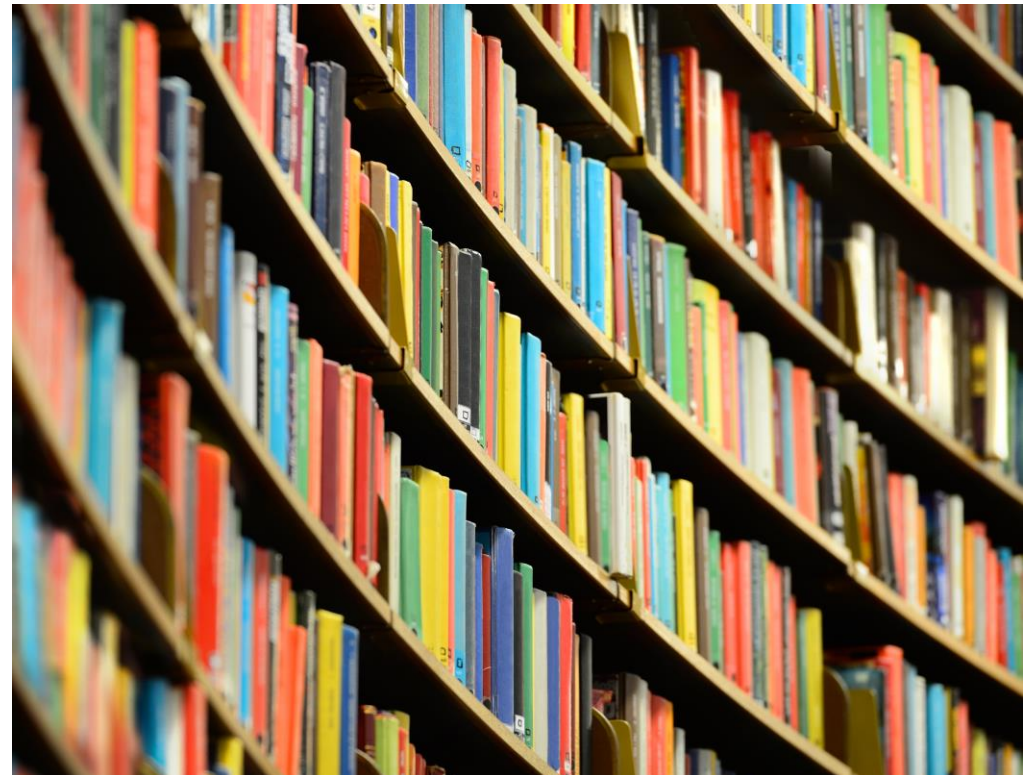


Unreasonable Burden

What you think it is:



What the AG thinks it is:



Commercial Purpose

Commercial Purpose: Use for sale, rent, or lease of services / use for monetary profit

May require certified statement of purpose/contract for use

May charge **reasonable fee** for associated costs (processing, staff, etc.)

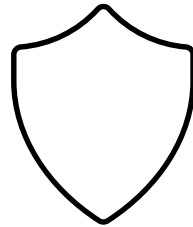
Commercial Purpose

- Commercial Purpose = 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.
- Does not include publication or related use by newspaper, television, periodical or other informational type programs or attorneys using the information in their scope of work.

Exemptions

- Exemptions are discretionary, not mandatory (unless a statute says so – i.e. tax information, vehicle accident reports, etc.)

- Shield NOT Shackle



- This is not an exhaustive list – all exemptions are found in KRS 61.878.

Personal Privacy Exemption

- Personal nature where public disclosure would constitute a clearly unwarranted invasion of personal privacy.
- Addresses, phone numbers, social security numbers, marital status, medical information, etc.

Personal Privacy Exemption

Things that are NOT exempt under privacy:

- Entire personnel files
- Disciplinary action
- Salary of public employees
- Education qualifications reported on employment applications

Records confidentially disclosed

- Which if openly disclosed would permit an unfair commercial advantage.
- Does not protect confidentiality clauses in settlement agreements.

Test Questions, Scoring Keys, Exam Data

- A local government human resources division properly denies a request to inspect a scoring key used in evaluating applicants for positions in the local government pursuant to KRS 61.878(1)(e). OAG 92-80.



BODY WORN CAMERA FOOTAGE:

Does the recording depict:

- KRS 61.168(5)(a):
Use of Force
- KRS 61.168(5)(b):
Detention or Arrest
- KRS 61.168(5)(c):
Subject of Formal Complaint

YES
NO

Disclose According to the
Open Records Act
KRS 61.870-61.884

- Does the recording depict one of the following under KRS 61.168(4):
- a) Interior of private residence with reasonable expectation of privacy
 - b) Inside of medical or mental health facility
 - c) HIPAA protected information
 - d) Inside of correctional facility that would jeopardize safety if disclosed
 - e) Nudity or sexual content
 - f) Minor child
 - g) Body of deceased
 - h) Reveals identity of witnesses, C.I.s, or undercover officers OR could jeopardize the safety of one of those individuals
 - i) Location of domestic violence program or shelter
 - j) Family Educational Rights and Privacy Act protected information
 - k) Criminal Justice Information Services confidential data by the FBI
 - l) Hospitalization of mentally ill
 - m) Serious injury or death of officer
 - n) Tactical police operations

NO

YES

Is it a directly involved person or entity?

YES

KRS 61.168(5)(d): Must be made available for viewing on the premises of the public agency

NO

Is it an attorney representing a directly involved person or entity?

YES

KRS 61.168(5)(d): Must be made available for viewing on the premises of the public agency
Also, under KRS 61.169, upon completion of Affidavit In Support of Limited Release, recording to be provided to the attorney, subject to redactions pursuant to the Open Records Act

NO

May choose to not disclose video.



Preliminary Drafts, Notes ...

- Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency. KRS 61.878(1)(i).

Preliminary Drafts, Notes ...

24-ORD-002 In re: Daniel Owens/Cabinet for Health and Family Services

- Unsuccessful applicant submitted an ORR for the panelists notes taken on a questionnaire form regarding their interpretations of his answers during a job interview.
- The office correctly noted that the questions appearing in the interview materials could potentially be used in future interviews, but the person has a right to inspect his evaluation and notes under KRS 61.878(3).

Personal Records

- None of the exemptions in KRS 61.878 can be construed to deny, abridge or impede the right of a public agency employee or an applicant for employment to inspect and copy any record that relates to him.

Redactions



- If any public record contains material which is not exempt, the public agency must separate the exempt material and make the nonexempt material available for examination. KRS 61.878(4)

Exchange of Information

- The exemptions do not 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. KRS 61.878(5).

Who enforces?



Review

May ask Attorney General to review denial.

Written opinion within 20 business days

Final UNLESS appeal within 30 days to Circuit Court

Can also proceed straight to Circuit Court.

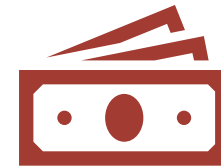
Enforcement



Injunctions



If willful, could pay court costs and attorneys fees



**Possible damages
(up to \$25 per day)**

Open Records Request for Personnel Files

Personnel File & Open Records

- Name ✓
- Address ✗
- Date of Birth ✗
- Social Security Number ✗
- Date of Employment ✓
- Position Title ✓
- Department Assignment ✓
- Salary ✓
- Disciplinary Action ✓
- Completed Training Programs ✓
- Record of leave – used and accrued ✓
- POPs Records ✗
- Workers' Comp ✗
- Interview Questions ✗
- Performance Evaluations ✗

POPs Information in the Personnel File

- **KRS 15.400(3)**: The Open Records Act notwithstanding, the person's home address, telephone number, date of birth, Social Security number, background investigation, medical examination, psychological examination, and polygraph examination conducted for any person seeking certification pursuant to [KRS 15.380](#) to [15.404](#) shall not be subject to disclosure.

How do I know what to keep?

Kentucky Department for Libraries and Archives
– Records Retention

Records Retention Schedule

Series	Records Title and Description	Function and Use
L4959	Policies and Procedures (Manuals or Memorandums) (V)	This record series documents all polices and procedures regulating the internal administrative functions of the local government. It is updated to reflect changes in administrative regulations, policies, procedures and state, federal or local mandates. This series provides an official operating policy while active and also reflects the history of the local government.
	Access Restrictions	None
	Contents	This record series may contain: Purchasing and procurement policies, internal policies, cost allocation policy, personnel policies and procedures, travel policy, meeting expense policies, investment policy, open records policy, retentions schedule, and federal and state mandates.
	Retention and Disposition	Retain one (1) copy permanently. Destroy excess copies when no longer needed.
L5034	Personnel File (V)	This record series documents an individuals employment history with a local government. It is the master file and the primary source of their employment history. This file should document all the employment history which is deemed significant in determining job performance.
	Access Restrictions	KRS 61.878 (1)(a) Exceptions include, but are not limited to, an employee's resume, test score(s), social security number, transcript(s), military record, home address and phone number(s).
	Contents	This record series may contain: Application, resume, criminal background checks; positions held, job descriptions; term of employment; letters of intent and resignation; education and experience verification; copies of immigration forms, W-4, birth certificate, and drivers license; Social Security number; complaints and disciplinary action; attendance and leave records; insurance records; copies of contracts; workers compensation; general correspondence and memos; commendations; addresses; policy and procedure acknowledgements; pension reports; and evaluations.
	Retention and Disposition	DESTROY THE FOLLOWING SIXTY (60) YEARS FROM DATE OF HIRE: 1) Applications for positions 2) Name 3) Last known address 4) Social security number 5) Letters of resignation 6) Starting and ending dates of employment 7) Retirement information 8) Verification of positions held 9) Disciplinary actions 10) Job descriptions. DESTROY FIVE (5) YEARS AFTER TERMINATION OF EMPLOYMENT: 1) Employee evaluations 2) Letters of intent 3) Policies/procedures acknowledgement 4) Health/life insurance membership 5) W-4 6) Copies of contracts 7) Leave records 8) Criminal background checks 9) Experience verification forms 10) Copies of driver license and birth certificates 11) Resumes 12) General correspondence/memos 13) Complaints 14) Commendations.

Records Retention

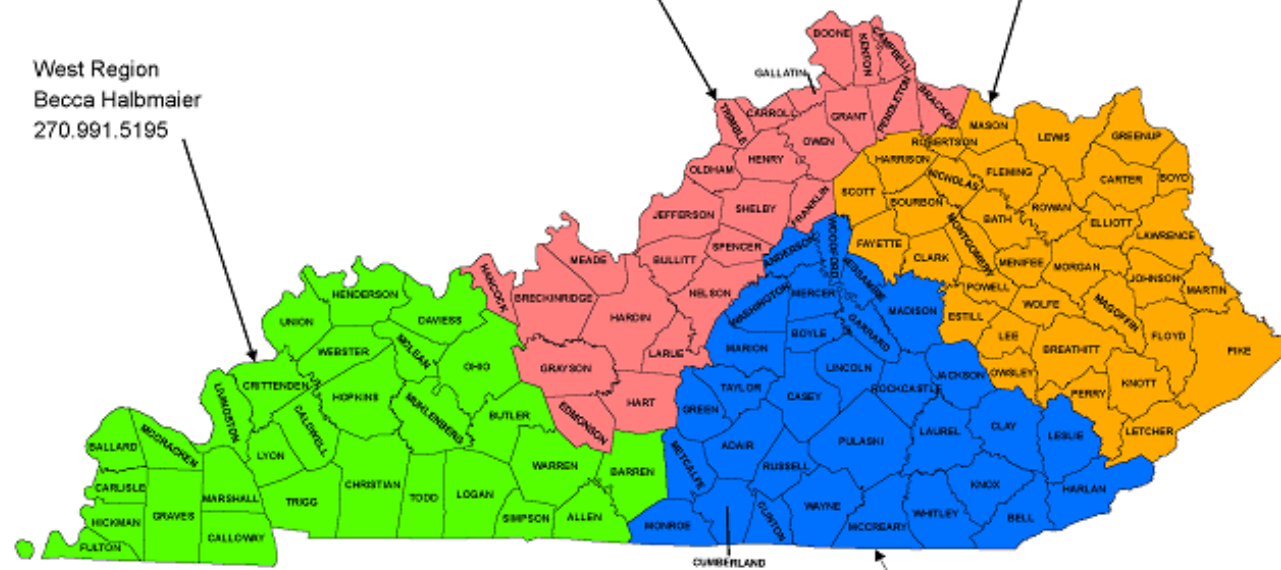
KDLA LOCAL RECORDS REGIONS

Regional Administrator Map
Archives and Records Management Division
KDLA
502.564.1745

North Central Region
Brian Wixom
502.750.1913

East Region
David Atha
502.234.4292

West Region
Becca Halbmaier
270.991.5195



South Central Region
Drew Preston
502.330.4986





Morgain M. Patterson
KLC Director of Municipal Law

mpatterson@klc.org

(859) 977-3700