

STEPS FOR REVIEWING REQUESTS UNDER KENTUCKY'S OPEN RECORDS ACT

This document is being provided for use as a general overview of steps for reviewing Open Records requests. Every request must be considered on a case-by-case basis. If requested documents are subject to pending litigation, or you have questions regarding disclosure and response, please contact the County Attorney.

STEP 1: REVIEW THE REQUEST

Is it a proper request? (i.e. in writing, signed by the applicant with legible name of requestor). *If yes, continue with Step 1. If no, notify applicant of appropriate requirements for a request.*

NOTE: The request does not need to clearly state that it is an open records request or include language similar to “*This request is being made pursuant to Kentucky’s Open Records Act...*” to be honored. If someone asks for records or documents, it must be treated as an open records request. The identity of the requestor is not relevant and should not be considered for the response.

Was it properly tendered? (i.e. by hand delivery, mail, or fax) *If yes, proceed with Step 1. If no, i.e. received by email, you may notify requestor of the proper methods – hand delivery, mail, fax – to submit request. Note: If the responding agency either through express consent or a course of conduct responds to open records requests via email, then that is essentially a waiver of the hand delivery, mail, or fax requirement.*

Is the request for specifically described documents? *If yes, continue with Step 1. If no, notify the requestor that no response is required, as requests for information need not be honored.*

Does your agency have custody or control of the record requested? *If yes, continue with Step 1. If no, notify the requestor that your agency does not have the record, and furnish the name and location, if known, of the official custodian of the agency housing the records.*

Is it unreasonably burdensome? (i.e. asking for something that will result in a review of 20,000+ emails?) *If no, proceed to Step 2. If yes, deny request and specify reason why it is overly burdensome. NOTE: The burden to show unreasonableness by clear and convincing evidence rests with the agency denying the request, so do not default to this exception to inspection solely because existing records may need to be compiled, reviewed, and redacted.*

STEP 2: IDENTIFY DATE OF REQUEST AND CALCULATE DATE RESPONSE WILL BE DUE

KRS 61.880(1) requires that the agency respond within **3 days**, excluding Saturdays, Sundays, and legal holidays, after the receipt of the request. Response time runs from the day after receipt of the request.

What if the documents cannot be obtained/reviewed/etc. in the 3 day time frame? Notify requestor within the 3 day time frame with a detailed explanation of the reason more time is necessary (i.e. documents require review for redaction, they are in active use, in storage, or otherwise not available) and the earliest date on which the record will be available for inspection. **NOTE:** It is okay, and recommended, to provide the requested documents piecemeal as they become ready for inspection.

STEP 3: IDENTIFY & REVIEW THE RECORDS THAT CORRESPOND TO THE REQUEST

What if the record no longer exists (but is legally required to, or proof exists from another source, i.e. a receipt)? Notify requestor of reason why document cannot be produced.

STEP 4: ARE THERE ANY EXCEPTIONS THAT PREVENT DISCLOSURE?

Does it contain information of a personal nature? *If yes*, would it constitute a clearly unwarranted invasion of personal privacy? (Review on case-by-case basis). *If no*, release unless other exceptions apply.

If it is a clearly unwarranted invasion of privacy, notify requestor of denial pursuant to KRS 61.878 and reason in support. If only part of the information would constitute an invasion of privacy, you may need to redact portions deemed private and not subject to disclosure and disclose the rest.

See KRS 61.878 for complete list of exceptions, including:

...

(d) Records relating to **prospective location of business**/industry relocation/expansion

...

(f) Contents of **real estate appraisals**, engineering/feasibility estimates and evaluations relating to the acquisition of property, until such time that property has been acquired.

(g) **Test questions, scoring keys**, etc. used to administer examination for employment

(h) **Law Enforcement Records** used to investigate **if disclosure would cause harm**

(i) **Preliminary drafts, notes, correspondence** with private individuals, other than correspondence intended to give notice of final action by the 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 restricted or **made confidential by Kentucky General Assembly**

(m) Public records where disclosure would have a reasonable likelihood of **threatening public safety** by exposing vulnerability in preventing, protecting against, mitigating, or responding to terrorist attack as limited by KRS 61.878(1)(m)(a)-(e)

STEP 5: HAVE YOU REVIEWED FOR APPROPRIATE REDACTIONS?

Courts have routinely objected to “blanket redaction” – denying records based on existence of some exempted information in an otherwise nonexempt record.

STEP 6: HAVE YOU PROPERLY CITED LAW FOR ANY EXEMPTIONS OR REDACTIONS?

If yes, you have completed your review and response. *If no*, review the relevant KRS and cite to the specific exemption under the Kentucky Open Records Act that prohibits disclosure of the record or requires portions be redacted.