Open Meetings/Open Records & Records Management Training Agenda

Wednesday, October 26, 2016
Pennyville Area Development District

Open Meetings/Open Records – 9:00 to 12:00
Presented by Ms. Amye Bensenhaver, Former Assistant Attorney General

I. Open Records Act
   a. Purpose and Construction
   b. General Requirements
   c. Duties in Responding to Open Records Requests
   d. Copying cost/Formatting
   e. Statutory Exception to the Right of Inspection
   f. Legal Challenges
   g. Role of Attorney General

II. Open Meetings Act
    a. Purpose and Construction
    b. General Requirements
    c. Duties in Responding to Open Meetings Complaints
    d. Statutory Exception Authorizing, and Requirements for, Closed Sessions
    e. Regular and Special Meetings/Video teleconferencing
    f. Legal Challenges
    g. Role of Attorney General

12:00-1:00 – Lunch “On Your Own”

Records Management – 1:00 to 4:00 p.m.
Presented by Trace Kirkwood and Kris Justus, KY Dept. for Libraries and Archives

I. Records Management (Trace Kirkwood, Manager, Local Records Program)
   a. Basic Principles of Managing Public Records
   b. Use of Retention Schedules
   c. Destruction of Obsolete Records

II. Electronic Records (Kris Justus, Records Analyst)
   a. Maintaining & Preserving Electronic Records
   b. Managing E-Mail Records
An Overview of the Open Records Act

Amye L. Bensenhaver
Former Assistant Attorney General
THE KENTUCKY OPEN RECORDS ACT
KRS 61.870 – 61.884

“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.”

We begin with the presumption of openness.
Affirming the imposition of penalties in the amount of $756,000 against the agency in a protracted open records dispute, the Court of Appeals reasons, “The Open Records Act is neither an ideal nor a suggestion. It is the law. Public entities must permit inspection of public records as required or risk meaningful punishment for noncompliance. Rigid adherence to this stark principle is the lifeblood of a law which rightly favors disclosure, fosters transparency, and secures the public trust.”
PURPOSE AND INTERPRETATION OF OPEN RECORDS ACT

“The public’s ‘right to know’ under the Open Records Act is premised upon the public’s right to expect its agencies properly to execute their statutory functions. In general, inspection of records may reveal whether the public servants are indeed serving the public, and the policy of disclosure provides impetus for an agency steadfastly to pursue the public good.”

Kentucky Board of Examiners v. Courier Journal and Louisville Times Co.

“[T]he statute exhibits a general bias favoring disclosure...and all exceptions must be strictly construed.”

Kentucky Board of Examiners

“The Act was intended to make transparent the operations of the state’s agencies.“

All books, papers, maps, photographs, cards, tapes, discs, diskettes, recording, 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.
KRS 61.870(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.
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, 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.
KRS 61.8715: Legislative Findings

“The General Assembly finds an essential relationship between the intent of Chapter 61 [dealing with open records] and that of KRS 171.410 to 171.740, dealing with the management of public records...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.”

Proper records management facilitates records access.
Commonwealth v. Chestnut, 250 SW3d 655,666 (Ky. 2008)

An agency “should not be able to rely on any inefficiency in its own internal record keeping system to thwart an otherwise proper open records request.”
Mandate of the Open Records Act

All public records shall be open for inspection by any person, except as otherwise provided by the Act.

“Our analysis does not turn on the purpose for which the request is made or the identity of the requester. We think the legislature clearly intended to grant any member of the public as much right of access to information as the next.”

Zink v. Commonwealth
GENERAL REQUIREMENTS

• Suitable Facilities (for inspection)

• Time for Inspection (regular office hours)

• Mailing Copies (residence/place of business outside county where records maintained)

• Appointment of Official Custodian (officer/employee responsible for maintenance, care, and keeping of public records)

• Rules and Regulations governing records access (adopt and post)
TITLE 200, CHAPTER 1 - FINANCE AND ADMINISTRATION; PUBLIC RECORDS

person and which are generally recognized as confidential; or for the grant or review of a license to do business which if openly disclosed, would permit an unfair advantage to competitors of the subject enterprise, unless the disclosure or publication of such records is directed by law.

(3) Public records pertaining to the prospective location of a business or industry whose previous public disclosure has been made by the business' or industry's interest in locating in, relocating within, or expanding within the Commonwealth. Provided, however, that this exemption shall not include applications filed with state administrative agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in subsection (2) of this section.

(4) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for an agency relative to the acquisition of real property, until such time as all of the property has been acquired.

(5) Test questions, scoring keys and other examination data used to administer a licensing examination, or an examination for employment or an examination used to determine or control property tax valuations if the disclosure of the information contained in such records would harm the agency by revealing the identity of persons who would otherwise be unknown in the examination.

(6) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for an agency relative to the acquisition of real property, until such time as all of the property has been acquired.

(7) Centralized criminal history records maintained by the Kentucky Justice Cabinet and Intelligence and Investigative reports maintained by state criminal justice agencies except as provided in KRS 17.150, and records of law enforcement or administrative agencies compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information contained in such records would harm the agency by revealing the identity of persons who would otherwise be unknown in the investigation.

Ambiguity and uncertainty shall be resolved in favor of the public interest. The official custodian shall have the burden of justifying with specificity a refusal of a demand for inspection of any public records covered by this subsection except centralized criminal history records maintained by the Kentucky Justice Cabinet. Preliminary drafts, notes, correspondence between state administrative agencies and private individuals, other than correspondence intended to give notice of final action by an agency.

(8) Preliminary recommendations and memoranda in which opinions are expressed or policies formulated or recommended.

(9) All public records or information, the disclosure of which is prohibited by federal law or regulation.

(10) Public records or information, the disclosure of which is prohibited or restricted or otherwise made confidential by the statutes of this Commonwealth.

Section 5. Application for Inspection of Public Records. (1) Persons requesting to inspect public records of state administrative agencies shall file a written application describing the records requested to be inspected, on a form prescribed by the Finance and Administration Cabinet, with the official custodian of the records of the office of the agency, such as the office of the Attorney General, on a form prescribed by the Finance and Administration Cabinet, with the official custodian of the records of the office of the agency. The application shall be signed by the applicant and shall be accompanied by the following information:

(a) The name, address, and signature of the applicant.

(b) The name and address of the custodian of the records.

(c) The purpose for which the records are to be inspected.

(d) The date and time of the inspection.

(e) The name and address of the person to whom the records are to be delivered.

(2) Application forms for the inspection of public records of state administrative agencies will be available from the Central Stores of the Finance and Administration Cabinet. Each state administrative agency shall be responsible for obtaining from Central Stores an adequate supply of the application forms for use by each of its offices. The application form shall include a receipt for the number of records requested by the applicant and one (1) copy of the receipt shall be furnished to the applicant.

(3) The official custodian of the records requested for public inspection shall promptly determine the availability of such records for inspection; if it is determined that the records are not available for inspection, the applicant, if present, shall be notified in writing of the reasons for the denial, and shall include a statement of the specific exception contained in Section 4 of this administrative regulation, and in KRS 61.670, the authority for the denial of the application and an explanation of how the exception applies to the record withheld. A copy, signed by the official custodian of the records, of the writing denying any application for the inspection of the public records of any state administrative agency, shall be sent to the Attorney General. Any person who has been denied the right to inspect any public records of a state administrative agency shall be entitled to appeal the denial of the application to the Attorney General. If any person who has been denied the right to inspect any public records of a state administrative agency requests the Attorney General to review the denial of his application, the agency shall furnish additional documentation concerning the circumstances of the denial of inspection of the records and a copy of

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(b) The name and address of the custodian of the records.

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Regulations Governing Records Inspection for the OAG

REGULATIONS GOVERNING THE INSPECTION OF THE PUBLIC RECORDS OF THE OFFICE OF THE ATTORNEY GENERAL

Administrative Hearings Branch
Office of Administrative Services
Department of Criminal Investigations
Office of Medicaid Fraud and Abuse Control
Office of Civil and Environmental Law
Office of Consumer Protection
Office of Criminal Appeals
Office of Prosecutors Advisory Council
Office of Rate Intervention
Office of Victims Advocacy
Office of Special Prosecutions

Pursuant to KRS 61.870 to 61.884, the public is notified that, as provided herein, the public records of the above named Agency of the Commonwealth of Kentucky are open for inspection by any person on written application to Mitchel Denham, whose address is State Capitol, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, from 8:00 a.m. to 4:30 p.m., Monday through Friday, each week, except holidays. Application forms for the inspection of the public records of this agency will be furnished on request to any person by an employee in this office. Assistance in completing the application form will be provided by an employee upon request.

Applicants for inspection of public records shall be advised of the availability of the records requested for inspection, and shall be notified in writing not later than three (3) working days after receipt of an application for inspection of any reason the records requested are not available for public inspection.

Copies of written material in the public records of this agency shall be furnished to any person requesting them on payment of a fee of 10 cents a page; copies of non-written records (photographs, maps, material stored in computer files or libraries, etc.) shall be furnished on request, on payment of a charge equal to the actual cost of producing copies of such records by the most economic process not likely to damage or alter the records.

__________________________________
ANDY BESHEAR
ATTORNEY GENERAL
The Request

Request to Inspect Records

- Written application
- Signed by requester with name printed legibly
- Describing records

- Use of preprinted form

- Modes of delivery: Fax, US Mail, or hand-delivery

- Specificity of description:
  - **Onsite inspection**—“adequate for a reasonable person to ascertain its nature and scope. . . .”
  - **Copies by mail**—a “precise description” is one that is “definite, specific, and unequivocal.”

- Requester should “describe the records he seeks so as to make locating them reasonably possible.”
- Request does not have to reference the Open Records Act
The Response

Written response
  - Within three business days
  - If request will be *honored*, a statement that records are available for inspection or will be copied and mailed upon prepayment of copying and postage fees
  - If request *denied*, citation to specific exception and brief explanation of how exception applies to record(s) withheld
  - Early cases stated that the agency should provide “particular and detailed information” in response to a request

Issued by official custodian or under his authority

Agency response time runs from the day after receipt of the request per KRS 446.030(1)(a)

Absence or unavailability of records custodian does not toll agency response time

Keeping the lines of communication open
To meet its burden of proof, “the agency should provide the requesting party with sufficient information about the nature of the withheld record (or the categories of withheld records) to permit the requester to dispute the claim (of exemption).”

Ultimately, “the agency bears the burden of proof, and what it must prove is that any decision to withhold responsive records was justified under the Act.”
Denials based on the Nonexistence of Responsive Records

• *City of Ft. Thomas* at 848, note 3--If there is a *prima facie* showing that responsive records have not been accounted for, an agency “may also be called upon to prove that its search was adequate.”

• *Eplion v. Burchett*, 354 SW3d 598 (Ky.App. 2011)-- “When it is determined that an agency’s records do exist [but those records are not produced], the requester ‘is entitled to a written explanation for their nonexistence.’”

• *Bowling v. LFUCG*, 172 SW3d 333 (Ky. 2005)—BUT, absent a *prima facie* showing by the requester that requested records exist, agency is not required to “prove a negative.” *Prima facie* is defined as “a fact presumed to be true unless disproved by evidence to the contrary.”
Copying Charges

Nonexempt Records Used for Noncommercial Purpose
- Actual cost including medium and mechanical processing
- Not including staff costs
- In *Friend v. Rees*, 696 SW2d 325 (Ky.App.1985) court approves ten cents per page copying fee (see also 200 KAR 1:020 Section 3(1))

Nonexempt Records Used for Commercial Purpose
- Cost to agency of medium, mechanical processing, and staff
- Cost to agency of creation, purchase, or other acquisition of the records

- Specific statutory fee provisions override general open records fee provision (example: KRS 64.019 relating to county clerks)
- Agencies are not required to mail copies until they have received payment for copies and postage
- If agencies maintain records in both electronic and hard copy format, discretion rests with the requester to designate which format he prefers
- Agencies are not required to convert hard copy records to electronic records
64.019 Procedures for obtaining copies of records under control of county clerk -- Per-page fee. Notwithstanding any other provision of the Kentucky Revised Statutes:

(1) A county clerk may establish procedures for obtaining copies of records under his or her control, including restricting the use of devices including but not limited to scanners, cameras, computers, personal copiers, or other devices that may be used by an individual seeking a copy of a document maintained by the clerk, but a clerk shall not restrict the ability of any person to make handwritten notes regarding documents and records maintained by the clerk.

(2) (a) Unless the provisions of paragraph (b) of this subsection apply, the county clerk shall collect a per-page fee, not to exceed fifty cents ($0.50) per page, for providing legal size or smaller paper copies of records or documents maintained by the clerk.

(b) If a higher fee for copying a document or record is specifically established by statute, the provisions of that statute shall prevail over the provisions of this subsection.
COMMERCIAL PURPOSE

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.
EXCLUDES

• Publication by newspaper or periodical
• Use by radio or television station in its news or informational programs
• Use in preparation of litigation, claims settlement, or by attorneys representing parties
Records Production

Records must be available for inspection or mailing on the *third day* unless:

- KRS 61.874(1)—applicant request that copies be mailed but has not prepaid for copies (including postage if applicable)
- KRS 61.872(4)—they are not records in the custody or control of the agency
- KRS 61.872(5)—they are in active use, in storage, or not otherwise available
- KRS 61.872(6)—the request is unreasonably burdensome or is intended to disrupt essential functions
- KRS 61.878(1)(a)-(n)—they are statutorily exempt
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.

“The obvious fact that complying with a request will consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden.”

*Commonwealth v. Chestnut*
12-ORD-097

In re: Charles Coleman/Campbell County Public Library

Obviously, six months represents a far greater delay in producing public records than [three] days. We do not endorse such a delay under any circumstances other than the extreme circumstances presented in this appeal. Mr. Coleman’s request implicates a vast number of records. Were Mr. Morgan to devote 7.5 hours each work day in the next six months to the task of reviewing each of the 22,117 records implicated*, as the library proposes, he would be required to review 184 records per day or 24 records per hour. If he were to devote 7.5 hours each work day in the next three weeks, as Mr. Coleman proposes, he would be required to review 1,474 records per day or 197 records per hour. While he has made a commitment to complete the task by the earliest possible date, and to dedicate his efforts to that end, he has not committed, and cannot responsibly commit, to dedicate every working hour to the fulfillment of Mr. Coleman’s request. While it may well have been “the legislative intent [in enacting the Open Records Law] that public employees exercise patience and long-suffering in making public records available for public inspection,” OAG 77-151, p. 3, such a commitment would “require a level of ‘patience and long-suffering’ that the legislature could not have intended.” 95-ORD-47, p. 6.

*Original request implicated 340,000 emails.
Such broadly worded requests for “all email” sent or received by a particular person or persons, or related to a particular subject, or within a stated timeframe, have become increasingly common. Although such requests are not “improper,” they could not have been envisioned by the General Assembly in adopting a three working day statutory deadline for records production when the Open Records Law was enacted in 1976, and applicants submitting requests cannot reasonably expect agencies to which these requests are directed to produce all responsive records within the three day deadline. Applicants are therefore urged to frame their requests as narrowly as possible and, if unable or unwilling to do so, to expect reasonable delays in records production.
COMMONLY CITED EXCEPTIONS

KRS 61.878(1)(a) - public records containing information of a personal nature the public disclosure of which would constitute a clearly unwarranted invasion of personal privacy

Kentucky Board of Examiners v. Courier Journal (1992) established the “balancing of interests” mode of analysis weighing privacy interests against public’s interest in insuring that agencies properly execute their functions.

Beckham v. Board of Education (1994) recognized third party standing to contest disclosure of public records

Zink v. Commonwealth (1994) declared that only relevant public interest is the extent to which disclosure “serves the citizens’ right to be informed as to what their government is doing.”

See also Palmer v. Driggers (employee misconduct), Cape Publications v. City of Louisville (rape victims), Cape Publications v. City of Louisville (performance evaluations); LFUCG v. Lexington Herald Leader (settlement agreements), Doe v. Conway (Attorney General’s investigative file), Lawson v. OAG (proffer made to AG in bid rigging invest.)

Kentucky New Era v. City of Hopkinsville (2013) Kentucky Supreme Court affirms propriety of redaction of SSNs, drivers license numbers, home addresses, telephone numbers from all arrest citations (KYIBRS reports) under privacy exception and approves the policy of “categorical redaction”
Kentucky New Era v. City of Hopkinsville, 414 SW3d 76 (Ky. 2013)

“The Open Records Act is meant to open the state’s public agencies to meaningful public oversight, to enable Kentuckians to know ‘what their government is up to.’ It is not meant to turn the state’s agencies into clearing houses of personal information about private citizens readily available to anyone upon request. To ensure that that is not its effect, the Act includes an express exemption for agency records the disclosure of which would amount to a clearly unwarranted invasion of personal privacy.”
“Categorical redaction”

“With respect to discrete types of information routinely included in an agency’s records and routinely implicating similar grounds for exemption, the agency need not undertake an ad hoc analysis of the exemption’s application to such information in each instance, but may apply a categorical rule” of nondisclosure.

In City of Hopkinsville, that “particular, recurring class of information” consisted of “information identifying private citizens in police reports.”

(addresses, phone numbers, SSNs, driver’s license numbers of witnesses, victims, and uncharged suspects as well as information identifying juveniles)

With respect to law enforcement records, the privacy interest “will almost always be substantial, and the public interest in disclosure [of the private details of personal lives] rarely so.”

Court continues to reject the practice of “blanket redaction”—denying access to entire record because some information it contains is exempt.
KRS 61.878(1)(i) and (j)-preliminary drafts, notes and correspondence with private individuals and preliminary recommendations/preliminary memoranda in which opinions are expressed or policies formulated or recommended

- **City of Louisville v. Courier Journal** (1982) and **Board of Medical Licensure v. Courier Journal** (1983) recognized that if preliminary documents are adopted “as part of the final action, clearly the preliminary characterization is lost to that extent” but that “unless so adopted and made a part of the final action,” preliminary documents retain their preliminary characterization and may be withheld.
- **Univ. of Kentucky v. Courier Journal** (NCAA investigative records); **Palmer v. Driggers** (decision to take no action is final action); **Baker v. Jones** (internal email communications)
- **University of Louisville v. Sharp** (2013) relating to emails concerning scheduling of, and agenda for, meetings exchanged by public employees and holding that “piecemeal disclosure along the path of the decision-making process is not mandatory.”
KRS 61.878(1)(h)—records of law enforcement agencies/agencies involved in administrative adjudication compiled in the process of detecting/investigating statutory/regulatory violations if disclosure would harm agency by premature release of information to be used in prospective action

*City of Ft. Thomas v. Cincinnati Enquirer* (overruling *Skaggs v. Redford*)

- The investigatory file of a law enforcement agency or an agency involved in an administrative adjudication is not categorically exempt under the Open Records Act merely because it pertains to a prospective enforcement action.
- To invoke KRS 61.878(1)(h), agency must show (1) records withheld were compiled for law enforcement purposes or purposes related to administrative adjudication; (2) action is prospective; and (3) premature release of records would harm the agency “in some articulable way.”
- Supreme Court holds that “the exemption is appropriately invoked only when the agency can articulate a factual basis for applying it, only, that is, when, because of the record’s content, its release poses a concrete risk of harm to the agency in the prospective action.”
- By definition, a concrete risk “must be something more than a hypothetical or speculative concern.”
KRS 61.878(1)(k) and (l)-records made confidential by federal or state law

• Operates with statutory confidentiality provisions, or provisions limiting access to specified persons or entities, found outside of the Open Records Act

• Does not apply to executive orders or ordinances

• Examples: KRS 189.635 (accident reports); KRS 160.700 (student education records maintained by state educational institutions); KRS 131.190(1) (records revealing the affairs of a person’s business maintained by Revenue Cabinet); KRS 61.661 (data in Kentucky Retirement System’s member account); 18 USC 2721 (Drivers Privacy Protection Act); 20 USC 1232g (student education records maintained by educational institutions receiving federal funds)
“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...”

Limited to eight narrowly framed records categories (for example, “vulnerability assessments,” “criticality lists,” “antiterrorism protective measures,” “counterterrorism measures,” “security and response needs assessments,” and “infrastructure records...”)
“Terrorist act” is defined as “a criminal act” intended to:

a. Intimidate or coerce a public agency or all or part of the civilian population;
b. Disrupt a [critical infrastructure] system;
c. Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.”
DUTY TO REDACT
KRS 61.878 (4)

If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the non-exceptioned material available for examination.
“Waivability” of the exemptions

- In *Lawson v. Office of the Attorney General*, the Supreme Court expressed the view that “the General Assembly did not intend to mandate an iron rule of nondisclosure whenever an exemption applies.”
- 1st rationale: Such a rule would run counter to the principle that rights may be waived
- 2nd rationale: A “rigid exemption reading runs counter to the policy” that free and open examination is in the public interest
- *The exemptions are largely discretionary*
ROLE OF ATTORNEY GENERAL

• Appeal to Attorney General/Circuit Court
• Notification
• Request for Additional Documentation/Disputed Documents
• Burden of Proof
• Decision Stating Whether Agency Violated Open Records Act
• Appeal of Attorney General’s Decision within Thirty Days
Penalties

- Prevailing requester may be awarded costs, including reasonable attorney’s fees, incurred in connection with legal proceedings upon a finding that records were willfully withheld.
- Prevailing requester may be awarded up to $25 per day for each day he was denied access.
- Willful concealment or destruction of public records with intent to violate the Act is a Class A misdemeanor.
- Failure to produce records after entry of final judgment directing disclosure constitutes contempt.
“Willfulness”

*City of Ft. Thomas* at 854

- “‘Willful’ connotes that the agency withheld requested records *without* plausible justification and with conscious disregard of the requester’s rights.” *Id.*

- Factors bearing on the exercise of discretion to award penalties include “the extent of the agency’s wrongful withholding of records; the withholding’s egregiousness; harm to the requester as a result of the wrongful withholding, including the expense of litigating the matter; and the extent to which the request serves an important public purpose.” *Id.*

- “Only if the trial court has abused its discretion will its fee determination be disturbed on appeal.” *Id.*
Open-records suit against city settled for $30,250

Attorney had sought billing information about father's case

By CHRIS KENNING
The Courier-Journal

The city of Louisville has paid local attorney Brian Cullinan $30,250 to settle a decade-old open-records lawsuit, ending a legal feud that stems from former Mayor Jerry Abramson's administration.

The settlement, reached last month, came as a result of a lawsuit Cullinan filed against the city in the early 1990s to obtain copies of billing records of a contract law firm hired by the city.

Cullinan said he was provided the copies but took issue with the amount of material redacted, or blocked out.

Under Kentucky law, a judge can order a government to pay $25 a day for each day it fails to hand over records it should, plus attorney fees.

Cullinan said the settlement was "fair" and commended the city for "not continuing to spend taxpayer funds ... to deny access to public records."

Attorney Mark Dobkins, who represented the city, wouldn't comment on the case.

Counselor Jon Fleischaker, an expert on Kentucky's open-records law, said the settlement represents "a substantial payment in a case like this."

Cullinan said he first sought records in 1991, a year after his father, Keith Cullinan, an investment adviser, was sued by the city over accusations that he took excessive fees and commission from the police pension fund while handling its $34 million in assets.

The city dropped its case against Cullinan three years later.

Brian Cullinan said he wanted the records because he felt the case against his father was "political" and thought the records would help flesh out his theory.

But a countersuit by Keith Cullinan, who claimed the city's lawsuit had ruined his reputation, led city officials, citing pending litigation, to redact some of the records sought by Brian Cullinan.

Last year, the city entered into a $2 million settlement with Keith Cullinan. That made all aspects of the documents public, Brian Cullinan said.

But he still wanted a Jefferson circuit judge to apply the law allowing the court to make the city pay $25 a day plus attorney fees for not turning over information.

City leaders fined for closed sessions

LEXINGTON — A judge has ordered Lexington city officials to pay more than $11,000 for flouting the state Open Records Act.

Chief Circuit Judge Mary Noble cited the city's obstinate failure to comply with the law regarding a request by Philip Overstreet, a computer programmer in the city's division of engineering, who sought records of payments the city had issued to lawyer Robert Roark for legal work.

Twice before, Judge Noble said, she had sanctioned the city for refusing to give Mr. Overstreet the records, but still it balked, withholding almost 2,000 pages of the 2,400 he wanted. The city was fined $2,800 for those violations.

This time, Judge Noble ordered the city to pay the maximum state law allows: $4,745 in fines. She also told the city to pay $6,430.62 in legal fees.
FRANKFORT, KY. — The Kentucky Cabinet for Health and Family Services must pay a $756,000 penalty after it “willfully circumvented” open-records laws by failing to fully release records on child abuse fatalities and near deaths, according to a scathing court order issued Monday.

Franklin Circuit Judge Phillip Shepherd said the cabinet made a “mockery” of Kentucky’s Open Records Act by maintaining that documents — including dozens already in the public domain, such as reports that contain the identities of convicted child abusers — remain confidential.

His 56-page ruling orders the cabinet to pay statutory penalties and produce information it has withheld, arguing that the cabinet has demonstrated an unwillingness to comply with the law without “significant” court sanctions. The plaintiffs — The Courier-Journal and Lexington Herald-Leader — are also allowed to seek attorney fees.

The files are subject to open records law “to ensure both the cabinet and the public do everything possible to prevent the repeat of such tragedies in the future,” Shepherd wrote. “There can be no effective prevention when there is no public examination of the underlying facts.”
FRANKFORT, Ky.--Kentucky was ordered Tuesday to pay more than $300,000 to two Kentucky newspapers, including The Courier-Journal, for attorneys fees after they successfully sued for access to records involving children killed while under state supervision.

Franklin Circuit Judge Phillip Shepherd's final ruling rejects a request by the Cabinet for Health and Family Services to dismiss his December order requiring the cabinet to pay the plaintiffs' attorneys fees, though that figure was not set until Tuesday.

In awarding Courier-Journal attorneys $228,887 and Herald-Leader attorneys $72,897, Judge Shepherd cited four children by name, "and dozens of others," who died while under the cabinet's supervision. He said the court did not consider their deaths "inevitable."
FRANKFORT, Ky. – The Kentucky Cabinet for Health and Family Services is appealing a recent court decision in a five-year legal battle over newspaper access to child abuse records.

Franklin Circuit Judge Phillip Shepherd found last year that the cabinet "willfully circumvented" the Open Records Act by failing to fully release files on child abuse fatalities and near deaths.

He has fined the cabinet $756,000 and ordered payment more than $300,000 in attorney fees to The Courier-Journal and Lexington Herald-Leader, which sued for access to the documents.

But the cabinet filed an appeal with the Kentucky Court of Appeals on Monday, asking for the case to be transferred directly to the Kentucky Supreme Court.

Officials also are requesting that Shepherd stay his order to release case files on children who were being monitored by the state when they died or nearly died from abuse or neglect.
VIOLATIONS OF THE OPEN RECORDS ACT MAY BE BASED ON

1. Failure to permit inspection of public records during the agency’s regular office hours and to make suitable facilities available for inspection (KRS 61.872(1) and (3)(a))

2. Failure to mail copies of nonexempt public records to requesters who reside or have their principal place of business outside the county in which the records are located if the requester precisely describes the records and the records are readily available within the agency (KRS 61.872(3)(b))

3. Requiring the requester to use the agency’s open records request form or requiring the requester to submit a request containing more than a description of the record to be inspected, his name printed legibly, and his signature (KRS 61.872(2))

4. Failure to make records available for inspection within three business days of receipt of the request unless a detailed explanation of the cause for delay, and a statement of the earliest date, time, and place for inspection, is issued by the agency on the third day (KRS 61.872(5))
VIOLATIONS OF THE OPEN RECORDS ACT MAY BE BASED ON

5. Denying an open records request as unreasonably burdensome or intended to disrupt the agency's essential function without providing clear and convincing evidence to sustain the denial (KRS 61.872(6))

6. Refusing to provide copies of records inspected, or imposing excessive copying charges for those records that exceed the agency’s actual costs, not including staff costs (KRS 61.874(1))

7. Failure to adopt and post, in a prominent location accessible to the public, rules and regulations governing open records access for the particular agency (KRS 61.876(1)(a)-(d))

8. Denying a request for a public record that does not qualify for nondisclosure under one or more of the 14 exceptions to the Open Records Act ((KRS 61.878(1)(a)-(m))

9. Failure to mask exempt information from an otherwise public record and release the nonexempt portions of the record (KRS 61.878(4))

10. Failure to respond in writing, and within three business days, to an open records request, and, if request is denied, to cite the exception authorizing nondisclosure and explain how it applies to the record withheld (KRS 61.880)
Your Duty Under the Law

The Kentucky Open Records and Open Meetings Acts

Office of the Attorney General
Andy Beshear, Attorney General

August 2016
Your Duty Under the Law explains the procedural and substantive provisions of the Open Meetings Act, KRS 61.800 to 61.850, and the Open Records Act, KRS 61.870 to 61.884, and contains basic information about the Acts. Pursuant to KRS 15.257(1), the Office of the Attorney General distributes this written information to assist the public officials of Kentucky in complying with the Open Meetings and Open Records Acts.

The Office of the Attorney General welcomes suggestions for improvements to this work, as well as ideas for future publications. Comments may be sent to the Attorney General’s Office, 700 Capital Avenue, Frankfort, Kentucky 40601, or to our website, http://ag.ky.gov.

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The Open Records and Open Meetings Acts:

Your duty under the law

Kentucky’s laws on open records and open meetings affect every public official and every public agency. It is important that you be prepared to deal with the numerous legal questions that arise under those laws. This brochure provides an analysis of the Open Records and Open Meetings Acts and is designed to assist you in answering these questions. It contains a description of the general requirements of the laws, the procedures you must follow in implementing them, the exceptions you may invoke in appropriate circumstances, and the role of the Attorney General in interpretation and enforcement. Please note that the italicized and bulleted text reflects the courts’ and the Attorney General’s interpretation of the Acts. Because the Attorney General’s Office acts as an impartial tribunal in open records and open meetings appeals, we cannot advise public agencies and public officials on how to deal with specific situations. The following information should, however, prove useful to you in complying with Kentucky’s laws on open records and open meetings.

The Open Records Act

In 1976, the General Assembly enacted the Open Records Act, KRS 61.870 to KRS 61.884, which establishes a right of access to public records. The General Assembly recognized that the free and open examination of public records is in the public interest. The General Assembly has also recognized that there is an essential relationship between proper records retention and management and records access. All public records, whether they are stored in a computer or on paper, must be open for inspection unless the records are exempted by one or more of the fourteen exemptions found in the Act. All public agencies are required to make nonexempt public records available to any requester, and to provide suitable facilities for exercise of the right of inspection. A public agency may not consider the requester’s identity or purpose in seeking access to public records.

What are public records?

The Open Records Act applies to public records maintained by state and local government agencies. The agencies covered by the Act include:

- state and local government officers, departments, and legislative bodies;
- county and city governing bodies, school district boards, special district boards, and municipal corporations;
• state or local government agencies created by statute or other executive and legislative acts;
• bodies created by state or local authority in any branch of government;
• bodies that receive at least 25% of their funds from state or local authority, within any fiscal year, excluding funds derived from a state or local authority in compensation for goods or services that are provided by a contract obtained by a public procurement process;
• an entity where the majority of its governing body is appointed by a public agency;
• agencies created and controlled by public agencies; and
• interagency bodies of two or more public agencies.

Subject to fourteen exemptions, records that are prepared, owned, used, possessed, or retained by a public agency are public records and must be made available upon request.

• The term “public records” includes all such records even if they are not subject to inspection under an exemption and therefore not “open records.”
• The term “public record” includes emails, databases, and other records electronically generated and/or stored.
• The term “public record” includes public agency records that are not maintained on the agency’s premises.
• As of July 2016, the Open Records Act includes a definition of “booking photographs and photographic record of inmate.” The term is defined at KRS 61.870(9) as “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 taken pursuant to KRS 196.099.”

This definition corresponds to KRS 61.8746, also in effect as of July 2016. The new statute prohibits the use in a publication or the posting on a website of booking photographs or official inmate photographs if removal of the photograph requires payment of a fee. It also creates a right of action for injunctive or other appropriate relief in circuit court for any person who was required to pay a fee for removal of a booking photograph or official inmate photograph from a publication or website. Additionally, it establishes monetary damages for these civil actions.

What are the general requirements of the Open Records Act?

Suitable facilities. Each public agency must make suitable facilities available for persons who wish to exercise the right to inspect nonexempt public records.
Time for inspection. Each public agency must permit inspection of nonexempt public records during the regular office hours of the agency. Agencies must, upon request, mail copies to a person whose residence or principal place of business is outside the county in which the records are located. The person must first precisely describe the public records, and the records must be readily available within the public agency. The agency may require advance payment of copying fees and the cost of mailing.

Official custodian. Each public agency must appoint an official custodian of the agency’s records. The official custodian is the chief administrative officer or any other officer or employee of the agency who is responsible for the maintenance, care, and keeping of the agency’s records, regardless of whether the records are in his actual personal custody and control.

Rules and regulations. Each public agency must adopt rules and regulations which conform to the Open Records Act. The rules and regulations must be displayed by the agency in a prominent location which is accessible to the public. The rules and regulations must include:

- the principal office of the public agency and its regular office hours;
- the title and address of the official custodian of record;
- the fees charged for copies;
- the procedures to be followed in requesting public records.

The uniform rules and regulations drafted by the Finance and Administration Cabinet, which are found at 200 KAR 1:020, may be adapted for each agency’s use. (See, Sample open records rules and regulations at page 22.)

Compiling information/creating documents/specially tailoring format. A public agency is not required to compile information or to create a document that does not already exist in response to an open records request. If a public agency is asked to produce a record in a format other than the format it already maintains the record in, or to tailor the format to meet a request, the agency may, but is not required to, provide the requested format. The agency may then recover staff costs as well as any actual costs it incurs.

- A requester must be permitted to conduct on-site inspection of records if he or she expresses a desire to do so, even if the public agency prefers to honor his or her request by delivery of copies through the mail.
- Public agencies must permit on-site inspection during regular office hours and no other restriction on hours of access can be imposed.
- Public agencies may require a requester to conduct an on-site inspection, before receiving copies, if the requester resides or has his or her principal place of business in the county where the records are located and/or if he or she fails to precisely describe the records.
• The absence of the public agency’s official records custodian does not extend the agency’s response time; the agency should designate an acting custodian to ensure a timely response.
• Masking exempt information contained in an otherwise nonexempt public record is not equivalent to records creation; the agency must discharge this statutory duty and bear associated costs.
• A request for information (“How much are the city’s employees paid?”) need not be honored; a request for existing public records containing the information sought (“Please produce copies of the city’s payroll records.”) must be honored unless the requested records are exempt.

What is the procedure for inspecting a public record?

Request to inspect records. The request should be made to the official custodian of the public agency’s records. The custodian may require that the request be in writing, signed by the requester, with his name printed legibly on it, describing the records to be inspected. The request may be hand-delivered, mailed, or sent via facsimile to the agency.

Response to request. The public agency must respond to the request in writing and within three days, excluding Saturdays, Sundays, and legal holidays. If the request is denied, the response must include a statement of the specific exception which authorizes the agency to withhold the record, and a brief explanation of how the exception applies to the record withheld. The response must be issued by the official custodian or under his authority.

Application to wrong agency. If the public agency which receives the request does not have custody or control of the record requested, the agency must notify the requester and furnish the name and location of the official custodian of the appropriate agency’s public records.

Record not available. If the record requested is in active use, in storage, or not otherwise available, the public agency must notify the requester in writing and indicate a place, time, and date for inspection not to exceed three days from receipt of the request. If the record cannot be produced within three days, the agency must notify the requester in writing and provide a detailed explanation of the cause for the delay. The agency must also state the earliest date on which the record will be available.

Overly burdensome request. The public agency may refuse to permit inspection, or mail copies, if the request places an unreasonable burden on the agency in producing records or if the custodian believes that repeated requests are intended to disrupt the agency’s essential functions. Refusal for either of these reasons must be supported by clear and convincing evidence.

Copies of records. A requester has the right to obtain copies of all nonexempt public records upon payment of a reasonable fee, including postage
where appropriate. The agency may require prepayment for copies of records. Nonexempt public records must be made available for copying in either standard electronic or standard paper format, depending on the requester’s wishes, if the agency maintains the records in both formats. If the agency maintains the records in paper format only, it must make the records available in paper format. Agencies are not required to convert paper format records to electronic format.

The agency may prescribe a reasonable fee for making copies of nonexempt public records. The fee must not exceed the agency’s actual costs of copying the record, including the cost of the medium on which it is copied and the cost of mechanically reproducing it, but not including staff costs. In general, ten cents per copy has been deemed a reasonable fee for records in paper format. The Open Records Act authorizes public agencies to impose a higher copying fee for requests made for a commercial purpose. Commercial purpose is defined as “any use by which the user expects a profit either through commission, salary, or fee,” but excludes print or electronic media and attorneys representing parties in litigation. As explained on page 5, commercial use of booking photographs or official inmate photographs is prohibited where the commercial user publishes or posts the photograph and requires payment of a fee for removal of the photograph from the publication or website.

Online access. A public agency may provide online access to public records in electronic format. The agency may require that the requester enter into a contract, license, or other agreement with the agency, and may charge fees. The fees cannot exceed the cost of physical connection to the system and the reasonable cost of computer time access charges.

- Public agencies may use a preprinted request form but cannot require use of the form or demand more information on the form than the statute allows (requester’s name printed legibly, signature, description of records).
- Public agencies are not required to honor emailed open records request but should develop a standard response notifying the requester to submit his or her request by U.S. Mail, fax, or in person and immediately issue the standard response.
- A public agency’s three day response time begins to run the day after the request is received.
- Denials based on an unreasonable burden to the agency or a belief that requests are intended to disrupt its essential functions must be supported by clear and convincing evidence; for example, the number of records requested, the estimated amount of time and expense to the agency to fulfill the request, the duplicative nature of the requests.
- An agency may impose copying fees greater than ten cents per page only if a specific statute authorizes the agency to do so or the agency can prove that its actual copying costs, not including staff costs, are greater than ten cents per page.
What records are exempt from public inspection?

The Open Records Act permits a public agency to withhold certain records from a requester unless the requester obtains a court order directing their release. The exemptions are located at KRS 61.878(1) and include:

(a) records containing information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(b) records confidentially disclosed to an agency and compiled and maintained for scientific research;

(c) records confidentially disclosed to an agency or required by the agency to be disclosed to it which are generally recognized as confidential or proprietary and which if disclosed would permit an unfair commercial advantage to competitors, including records which are compiled and maintained in conjunction with an application for or the administration of a loan or grant; the application for or the administration of assessments, incentives, inducements, or tax credits; or the regulation of a commercial enterprise;

(d) records that relate to the prospective location of a business or industry which has not previously disclosed that it is interested in locating, relocating, or expanding in Kentucky;

(e) records developed by an agency in conjunction with the regulation or supervision of financial institutions which reveal the agency’s internal examining or audit criteria;

(f) real estate appraisals, engineering or feasibility estimates, and evaluations made by or for a public agency, in the course of acquiring property, until all of the property has been acquired;

(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 if disclosure of the records would harm the agency by premature release (such records...
may be inspected after enforcement action is completed or a decision is made to take no action, unless they were compiled and maintained by a county or Commonwealth’s attorney or unless another exception applies);

(i) and (j) preliminary documents including drafts, notes, correspondence with private individuals, recommendations, and memoranda in which opinions are expressed or policies formulated;

(k) and (l) public records that are prohibited from disclosure by state or federal law;

(m) 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, as defined in the exemption, and limited to eight precisely described categories of records; and

(n) records having historic, literary, artistic, or commemorative value that are accepted by the archivist of a public university, museum, or government depository from a donor or depositor other than a public agency if nondisclosure is requested in writing by the donor or depositor.

- The exemptions are “a shield and not a shackle” and an agency may elect to release records that are otherwise exempt except for records made confidential by federal or state law; an agency should also exercise caution before releasing records protected by the privacy exemption.
- A public agency employee is entitled to inspect any record that “relates” to him or her, even if the record is otherwise exempt, unless the requested record is part of an ongoing criminal or administrative investigation by the agency, the requested record is an examination, or the requested record is a record made confidential by federal or state law.
- Public agencies are encouraged to share otherwise exempt public records with other public agencies if the sharing of the records serves a “legitimate governmental need.”
- A public agency cannot withhold a public record which contains both exempt and nonexempt information, but must mask the exempt portion of the record and release the nonexempt portion of the record.
- Although Commonwealth’s and county attorneys’ litigation records are permanently exempt from public inspection, Commonwealth’s and county attorneys are not relieved of their duty to respond to an open records request for those records, and cannot deny access to other nonexempt
records of their offices (for example, contracts, payroll records, time sheets, travel vouchers).

What is the role of the Attorney General?

If a public agency denies a request for public records, the requester may file an appeal with the Attorney General for review of the agency’s actions. The appeal consists of a letter describing the circumstances of the denial, a copy of the written request, and a copy of the agency’s written denial, if the agency issued a denial. Unless the requester is an inmate confined in a jail or correctional facility, and he or she is aggrieved by a denial issued by the Corrections Cabinet, the requester may bypass the Attorney General’s Office and file an appeal in circuit court.

The Attorney General may request additional documentation from the agency, and may also request a copy of the disputed records. The Attorney General will not, however, disclose the records.

The Attorney General will review the appeal and issue a decision stating whether the agency violated the Open Records Act. The burden of proof rests with the agency to sustain its action. On the day he issues his decision, the Attorney General will mail a copy to the agency and a copy to the person who requested the disputed records. The decision will be issued in twenty days, excluding Saturdays, Sundays, and legal holidays. In unusual circumstances, this deadline may be extended an additional thirty days, excluding Saturdays, Sundays, and legal holidays.

Both the requester and the agency may appeal the Attorney General’s decision to the circuit court of the county where the agency has its principal place of business or where the record is maintained. The Attorney General should be notified of any circuit court action, but should not be named as a party in the action.

If an appeal is not filed within thirty days, the Attorney General’s decision has the force and effect of law, and can be enforced in circuit court. If the requester prevails against an agency in circuit court, he may be awarded costs, including reasonable attorney fees, if the court finds that the records were willfully withheld. The court may also award the requester up to $25 for each day that he was denied the right to inspect the records. The Open Records Act contains criminal penalties for public officials who willfully conceal or destroy records with the intent to violate the act. Officials who fail to produce records after entry of final judgment directing that records be produced may be found guilty of contempt.

- The Attorney General will not consider an appeal that does not include a copy of the written request and the written denial, if the agency issued a denial.
• Upon receipt of an open records appeal, the Attorney General will issue notification of the appeal, and a copy of the appeal, to the public agency against which the appeal was filed, and the agency may respond in writing to the Attorney General; the agency must send a copy of its response to the individual who filed the appeal.

• Because the Open Records Act provides for judicial review of the issues raised in an appeal, the Attorney General will not reconsider an open records decision.

• The Attorney General will not consider an appeal if the requested documents are released to the requester after his or her appeal is filed but before an open records decision is rendered.

• The Attorney General will consider an appeal based on the allegation that the public agency “subverted the intent of the Act short of denial of inspection;” this includes appeals based on the imposition of excessive copying fees.

• Since 1992, open records decisions have been designated ORDs rather than OAGs because they are legally binding on the parties if not appealed.

• The designation “Not to be Published” that appears in ORDs issued from 1992 to 1999 does not mean that the ORD cannot be cited as precedent or made public; such ORDs carry the same weight as ORDs designated “To be Published.”

• Because the public agency has the burden of proof to support its actions, the courts have directed that the agency “provide particular and detailed information in response to a request for documents,” and not just a “brief explanation;” the agency should also take the opportunity to try to meet its burden of proof in preparing its supplemental response to the notification of appeal.

• The Attorney General’s role in open records appeals is to issue a decision stating whether the public agency violated the Open Records Act; the Attorney General cannot enforce his decision by imposing penalties.

• A public agency that is dissatisfied with an ORD must appeal the decision within thirty days; if the public agency fails to appeal the decision, the decision has the force and effect of law, the agency is legally bound by the decision, and the circuit court must enforce it.
The Open Meetings Act

In 1974, the General Assembly enacted the Open Meetings Act, KRS 61.800 to KRS 61.850, which establishes a right of access to public meetings. The General Assembly recognized that the formation of public policy is public business and should not be conducted in secret. The Act requires that all meetings of a quorum of the members of a public agency where public business is discussed or action is taken must be public meetings. Public meetings must be open to the public at all times unless the subject of the meeting falls within one or more of the thirteen exceptions found in the statute. Members of the public may attend any public meeting and cannot be required to identify themselves in order to attend.

What is a public meeting?

The Open Meetings Act applies to all meetings held by state and local government agencies. The agencies covered by the act include:

- state and local government boards, commissions, and authorities;
- state and local legislative boards, commissions, and committees;
- county and city governing bodies, councils, school district boards, special district boards, and municipal corporations;
- state and local government agencies, including policy making boards of educational institutions, that are created by state or local statute or other legislative act;
- bodies created by state or local statute or legislative act in the legislative or executive branch of government;
- an entity where the majority of its governing body is appointed by a public agency;
- agencies, including committees, advisory committees, and ad hoc committees, which are established, created, and controlled by a public agency; and
- interagency bodies of two or more public agencies.

Subject to thirteen exceptions, all gatherings of a quorum of the members of a public agency at which public business is discussed or action is taken are public meetings and must be open to the public, regardless of where they are held, and whether they are regular or special or informational or casual gatherings held in anticipation of a regular or special meeting. An agency’s meetings may be conducted by videoteleconference, which is defined as a meeting occurring in two or more locations where individuals can see and hear each other by means of video and audio equipment, subject to specific legal requirements.
The courts have stated that the Open Meetings Act must be “interpreted most favorably to the public” since “failure to comply with the strict letter of the law in conducting meetings violates the public good.”

The Open Meetings Act applies to meetings of a quorum of the members of a public agency at which public business is discussed or action is taken; a discussion of public business by a quorum of the agency’s members triggers the requirements of the Act even if no action is taken.

The definition of “public agency” under the Open Meetings Act is narrower than the definition of “public agency” under the Open Records Act and does not include “state and local government officers” and bodies which receive “at least 25% of their funds from state or local authority funds;” this means, for example, that the mayor of a city is a public agency for open records purposes but not for open meetings purposes.

A committee of a public agency, even if its function is purely advisory, is a public agency for open meetings purposes and a quorum of its members is calculated on the basis of the committee’s membership and not the membership of the public agency that created it (the city commission, consisting of five members, creates a budget committee, consisting of three members – a quorum of the commission exists if three members are present and a quorum of the committee exists if two members are present); the committee must comply with all requirements of the Act.

A work session and a retreat are public meetings under the Open Meetings Act, but a quorum of the members of a public agency may attend a conference sponsored by another entity without triggering the requirements of the Act as long as the members do not discuss the public business of the agency they serve while at the conference.

“Public business” is not defined by statute but has been defined by the courts as “the discussion of the various alternatives to a given issue about which the [agency] has the option to take action.”

A quorum of the members of a public agency can attend a social gathering, sporting event, church service, etc. without triggering the requirements of the Open Meetings Act but cannot discuss the public business of the agency they serve while at these gatherings.

Public agencies cannot conduct their meetings by telephone; an absent member may listen to the meeting by speakerphone but cannot be counted toward the quorum and cannot vote or otherwise participate.

What are the general requirements of the Open Meetings Act?

Time and place of meetings. All meetings of public agencies, and committees or subcommittees thereof, must be held at specified times and places which are convenient to the public. Public agencies must evaluate space requirements, seating capacity, and acoustics in considering locations for public meetings so as to ensure, insofar as feasible, meeting room conditions that allow effective public observation. Public agencies should provide for a schedule of regular meetings by ordinance, order, resolution, bylaws, or by other means. This schedule of regular meetings must be made available to the public.
Minutes of meetings. Public agencies must keep minutes of action taken at every meeting which set forth an accurate record of votes and actions taken. These minutes must be open for inspection by the public no later than the conclusion of the agency’s next public meeting.

Public attendance at meetings. To the extent possible, meeting room conditions should allow for effective public observation of the meetings. No person attending the meeting can be required to identify himself in order to attend a meeting. The agency cannot place conditions on attendance of the public at a meeting other than the conditions required to maintain order. Since the General Assembly has not established procedural rules for the conduct of meetings and citizen participation, each agency must adopt its own rules of procedure, but those rules cannot conflict with the Open Meetings Act.

News media coverage. Public agencies must permit news media coverage, including recording and broadcasting.

Requirements for holding special meetings. All meetings which are not regular scheduled meetings are special meetings, and are subject to the following requirements:

Who may call a special meeting. The presiding officer or a majority of the members of the public agency may call a special meeting.

Notice requirements and content. The public agency must provide written notice of the special meeting consisting of the date, time, and place of the special meeting and the agenda. Discussion and actions at the meeting must be limited to the items on the agenda.

As soon as possible, written notice must be personally delivered, transmitted by facsimile, or mailed to every member of the agency and each media organization which files a written request to receive notice of special meetings. Notice should be received at least twenty-four hours before the special meeting.

Written notice of special meetings may be transmitted by electronic mail to public agency members and media organizations that have filed a written request with the public agency indicating a preference to receive email notification. The written request must include the electronic mail address of the agency member or media organization.

As soon as possible, written notice must also be posted in a conspicuous place in the building where the special meeting will take place and in a conspicuous place in the building where the agency has its headquarters. Notice should be posted at least twenty-four hours before the special meeting.
In the case of an emergency which prevents the public agency from complying with these requirements, the agency must make a reasonable effort to notify the members of the agency, media organizations which have filed a written request to be notified, and the public, of the emergency meeting. At the beginning of the emergency meeting, the person chairing the meeting must describe for the record the emergency which prevented compliance with the notice provisions, and these comments should appear in the minutes. Discussions and actions at the emergency meeting must be limited to the emergency for which the meeting was called.

- The courts have stated that the Open Meetings Act does not require agencies to conduct business “only in the most convenient locations at the most convenient times”; the Act is “designed to prevent governmental bodies from conducting [their] business at such inconvenient times or locations as to effectively render public knowledge or participation impossible, not to require agencies to seek out the most convenient time or location.”
- Agencies are not required to take minutes in closed sessions.
- If the public agency directs that an audio or video recording of its meeting be made, and the recording is created with agency equipment at agency expense, the recording of the meeting is a public record upon creation and must be made available for inspection within three business days of an open records request.
- The right of the public to attend a public meeting under the Open Meetings Act does not include the right to participate in the meeting and address the members of the agency; it is a statutory right “to observe with their eyes and ears what transpires at those meetings.”
- A member of the public, as well as the media, must be permitted to record a meeting.
- The notice of a special meeting must include the agenda, containing specific agenda topics (“new business,” “old business,” “open to floor,” etc. are not acceptable), in addition to the date, time, and place of the meeting. Because an agenda is not statutorily required for regular meetings, discussions at a regular meeting are not restricted to agenda topics if an agenda is prepared.
- Although the public agency can post notice of the special meeting on the agency website, web notice of the meeting does not satisfy the statutory requirement and must be in addition to, rather than in lieu of, delivery of the notice by U.S. Mail, facsimile, in person, or by email, where requested, and physical posting of the notice in a conspicuous place.
- The public agency is not obligated to provide notice to “interested” individuals who have requested notice of special meetings, only to the parties identified in the statute.
- The Attorney General has rarely found that conditions were sufficiently grave to justify a public agency’s decision to call an emergency meeting.
What subjects may be discussed in a closed session?

The Open Meetings Act permits a public agency to discuss certain subjects in a closed or executive meeting if notice is given in the regular meeting of the general nature of the business to be discussed, the reason for the closed session, and the specific exception authorizing the closed session. A closed session may be held only after a motion is made and carried in open session, and no final action may be taken in closed session. The exceptions to the Open Meetings Act are found at KRS 61.810(1) and include:

(a) deliberations of the Kentucky Parole Board;
(b) deliberations on the future acquisition or sale of real property by a public agency when publicity would be likely to affect the value of the property;
(c) discussions of proposed or pending litigation involving a public agency;
(d) grand or petit jury sessions;
(e) collective bargaining negotiations between public employers and their employees;
(f) discussions or hearings that might lead to the appointment, dismissal, or discipline of an individual employee, member, or student. However, general personnel matters may not be discussed in private;
(g) discussions between a public agency and a representative of a business entity and discussions concerning a specific proposal, if open discussions would jeopardize the siting, retention, expansion, or upgrading of the business;
(h) state and local cabinet meetings and executive cabinet meetings;
(i) committees of the General Assembly other than standing committees;
(j) deliberations of judicial or quasi-judicial bodies involving individual adjudications or appointments. This does not include meetings of planning commissions, zoning commissions, or boards of adjustment; and
(k) and (l) meetings which federal or state law or the Constitution require to be conducted privately; and
(m) portions of meetings devoted to a discussion of a specific public record exempted from disclosure under KRS 61.878(1)(m).

The Open Meetings Act prohibits any series of less than quorum meetings, where the members attending one or more of the meetings collectively constitute at least a quorum of the members of the agency, if the meetings are held to avoid the requirements of the Act. This prohibition does not restrict discussions between individual members if the purpose of the discussion is to educate the members on specific issues.
• The courts have stated that public agencies must give “specific and complete notification in the open meeting of any and all topics which are to be discussed during the closed meeting;” the Attorney General has stated that “notification must include both a statement of the exception authorizing the closed session and a description of the business to be discussed couched in sufficiently specific terms to enable the public to assess the propriety of the agency’s actions.”

• The courts have stated that the exception for proposed or pending litigation applies to “matters inherent to litigation, such as preparation, strategy, or tactics, but not just when an attorney is present.”

• Before going into closed session to discuss a personnel issue under KRS 61.810(1)(f), an agency must state whether the discussion will relate to either the appointment of, the dismissal of, or the discipline of an individual employee, member, or student, but the agency is not required to identify the individual by name.

• The prohibition on a series of less than quorum meetings conducted for the purpose of avoiding the requirements of the Open Meetings Act was added in 1992, prompting the courts to declare that the Act “prohibits a quorum from discussing public business in private or meeting in numbers less than a quorum for the express purpose of avoiding the open meetings requirement of the Act.”

• The Act does not prohibit all discussions between public officials outside of a public meeting (for example, at a social event, at church, or during a casual encounter), but does prohibit a quorum of the members of the agency from privately discussing the agency’s business or privately meeting in groups consisting of less than a quorum to discuss the agency’s business in order to defeat the requirements of the Act. This includes telephone discussions.

**What is the role of the Attorney General?**

If a person believes that a public agency has violated the Open Meetings Act, he may file a written complaint with the presiding officer of the agency. The complaint must state the circumstances of the violation and what the agency should do to correct it.

Within three business days of receipt of the complaint, the public agency must decide whether to correct the violation and notify the complaining party of its decision in writing. If the agency believes that no violation has occurred and rejects the proposed remedy, it must issue a written response which cites the statute authorizing its actions and briefly explain how the statute applies.

The complaining party may appeal to the Attorney General for review of the agency’s action within sixty days of receipt of the agency’s response. The appeal must include a copy of the written complaint and a copy of the agency’s response, if the agency issued a denial. The Attorney General will review the
appeal and issue a decision stating whether the agency violated the Open Meetings Act within ten business days. Both the complaining party and the agency will receive a copy of the decision. Both may appeal the Attorney General’s decision to the circuit court of the county where the public agency has its principal place of business or where the violation occurred. If an appeal is not filed within thirty days, the Attorney General’s decision has the force and effect of law and can be enforced in circuit court.

If the complaining party prevails against an agency in circuit court, he may be awarded costs, including attorney fees, if the court finds that the violation was willful. The court may also award the complaining party up to $100 for each violation.

- A complainant must appeal a public agency’s denial of, or failure to respond to, his or her open meetings complaint within sixty days, and if he or she does not do so the appeal is time-barred; there is no similar statutory limitation on bringing an open records appeal.
- Upon receipt of an open meetings appeal, the Attorney General will issue notification of the appeal, and a copy of the appeal, to the public agency against which the appeal was filed, and the agency may respond in writing to the Attorney General; the agency must send a copy of its response to the individual who filed the appeal.
- The Attorney General will not consider an appeal that does not include a copy of the written complaint and a copy of the written denial, if the agency issued a denial.
- Because the Open Meetings Act provides for judicial review of the issues raised in an appeal, the Attorney General will not reconsider an open meetings decision.
- Since 1992, open meetings decisions have been designated OMDs rather than OAGs because they are legally binding on the parties if not appealed.
- The designation “Not to be Published” that appears in OMDs issued from 1992 to 1999 does not mean that the OMD cannot be cited as precedent or made public; such OMDs carry the same weight as OMDs designated “To be Published.”
- The Attorney General’s role in an open meetings appeal is to issue a decision stating whether the public agency violated the Open Meetings Act; the Attorney General cannot comment on, or direct the implementation of, proposed remedial measures. Nor can he enforce his decision by imposing penalties.
- A public agency that is dissatisfied with an OMD must appeal the decision within thirty days; if the agency fails to appeal the decision, the decision has the force and effect of law, the agency is legally bound by it, and the circuit court must enforce it.
Sample open records response

Jane Q. Citizen
100 Maple Avenue
Anytown, Kentucky

Dear Ms. Citizen:

This will acknowledge receipt of your request for public records. You requested access to and copies of:

1. All contracts that the city has with Home Wrecker Service;
2. All invoices that the city has received from Home Wrecker Service;
3. All complaints received by the city that relate to Home Wrecker Service’s performance of duties under its contract with the city.

Contracts and invoices are available for inspection in my office Monday through Friday from 8:00 a.m. to 4:30 p.m. You may wish to contact me in advance to schedule an appointment and facilitate prompt access to these records.

Alternatively, we will send you copies of these records by mail at a cost of 10¢ per page. The cost to you, including postage, which is payable in advance, will be $2.46 (15 pp. at 10¢ per page, plus 96¢ postage). Please contact me if you would prefer to receive copies by mail.

One complaint has been filed against Home Wrecker Service. The city is currently investigating that complaint and considering an enforcement action. Release of the complaint at this time might harm the city by revealing the identity of the complainant, who has requested anonymity. Therefore, pursuant to KRS 61.878(1)(h), we must deny that portion of your request.

Sincerely,

John Q. Public
City Clerk
Sample open meetings response

John Q. Citizen  
Commonwealth Avenue  
Anytown, Kentucky

Dear Mr. Citizen:

In your recent letter to the city you stated that the city council, at its meeting held on June 30, 2016, went into an executive or closed session to discuss general personnel matters.

While the city recognizes that it cannot discuss general personnel matters in a closed or executive session, the city is permitted, pursuant to KRS 61.810(1)(f), to go into a closed session to discuss matters that might lead to the appointment of an individual employee.

The office of director of the streets and parks department is currently vacant and two persons have applied for the position. The matters discussed by the council during the closed session on June 30, 2016, involved the council’s evaluations of the two applicants for that office and such matters may be discussed at a closed session.

Sincerely,

Jane Q. Public  
Mayor
Sample open records rules and regulations

NOTICE

ADMINISTRATIVE REGULATIONS GOVERNING

INSPECTION OF THE PUBLIC RECORDS OF THE

___________________________________________________

(Name of State Administrative Agency)

___________________________________________________

(Office, Bureau, Division, etc.)

Pursuant to KRS 61.870 to 61.884, the public is notified that, as provided herein, the public records of the above named Agency of the Commonwealth of Kentucky are open for inspection by any person on written application to _________ (name), _________ (title), official custodian of the public records of the ____________ (state administrative agency) whose address is __________ or to __________ (name), __________ (title), official custodian of the public records of the ____________, (office, bureau, division, etc.) whose address is __________, from ___ a.m. to ___ p.m., Monday through Friday, each week, except holidays. Application forms for the inspection of the public records of this agency will be furnished on request to any person by an employee in this office. Assistance in completing the application form will be provided by an employee on request.

Applicants for the inspection of public records shall be advised of the availability of the records requested for inspection, and shall be notified in writing not later than three (3) working days after receipt of an application for inspection of any reason the records requested are not available for public inspection.

Copies of written material in the public records of this agency shall be furnished to any person requesting them on payment of a fee of ten (10) cents a page; copies of nonwritten records (photographs, maps, material stored in computer files or libraries, etc.) shall be furnished on request, on payment of a charge equal to the actual cost of producing copies of such records by the most economic process not likely to damage or alter the record.

This the _____ day of ______________, 20__.

___________________________________________________

(Agency Head or Designated Representative)
Open meetings and open records publications and decisions online and related publications:

Open Meetings Decisions and Open Records Decisions (OMDs and ORDs) issued by the Attorney General from 1993 to the present may also be accessed on our website at http://ag.ky.gov/civil/civil-enviro/orom/Pages/default.aspx. If you know the OMD or ORD number you wish to review, you may “Find all decisions for a particular year” (for example, 04-ORD-216 may be accessed by selecting the year 2004 and scrolling through the decisions for that year until 04-ORD-216 is located). If you wish to review OMDs or ORDs relating to a specific subject, you may “Search for an ORD or OMD” by word search or query (for example, “work sessions,” “accident reports,” “timely access,” or “adequate notice”). You may also access a particular ORD or OMD by typing the ORD or OMD citation in the search query box.

These additional resources will further enhance the public official’s understanding of his or her duties under the Open Meetings and Open Records Acts as well as related records management duties:

1. “Kentucky Open Meetings Open Records Laws: Statutes and Q&A”

2. Local Records Retention Schedules
   http://kdla.ky.gov/records/recretentionschedules/Pages/LocalRecordsSchedules.aspx

3. State Records Retention Schedules
   http://kdla.ky.gov/records/recretentionschedules/Pages/stat eschedules.aspx


5. Kentucky Revised Statutes Chapter 61
   KRS 61.800 – 61.850, Kentucky Open Meetings Act
   KRS 61.878 – 61.884, Kentucky Open Records Act
   http://www.lrc.ky.gov/statutes/chapter.aspx?id=37294
An Overview of the Open Meetings Act

Amye L. Bensenhaver
Former Assistant Attorney General
The basic policy of KRS 61.805 to 61.850 is that the formation of public policy is public business and shall not be conducted in secret and the exceptions provided for by KRS 61.810 or otherwise provided for by law shall by strictly construed.
PURPOSE AND INTERPRETATION OF OPEN MEETINGS LAW

• “The express purpose of the Open Meetings Act is to maximize notice of public meetings and actions. The failure to comply with the strict letter of the law in conducting meetings of a public agency violates the public good.”

  *Floyd County Board of Education v. Ratliff*
  955 SW 2d 921 (1997)

• “The right of the public to be informed transcends any loss of efficiency.”

  *Lexington Herald-Leader v. UK Presidential Search Com.*
  732 SW2d 884 (Ky. 1987)

• “Statutes enacted for the public benefit should be interpreted most favorably to the public.”

  *Courier Journal and Louisville Times Co. v. UofL Board of Trustees*
  569 SW 2d 374 (1979)
MANDATE OF THE OPEN MEETINGS ACT (KRS 61.810(1))

All meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times [except as otherwise provided in the Act].

1. Quorum of members
2. Discussion of public business OR
3. Taking action
KRS 61.810(2)

Any series of less than quorum meetings, where the members attending one or more of the meetings collectively constitute at least a quorum of the members of the public agency, and where the meetings are held for the purpose of avoiding the requirements of the Act shall be subject to the Act.

Aimed at prohibiting meetings of “floating” or “rolling” quorums and/or “serial meetings”
Violation of the Open Meetings Act relating to “secret meetings”

1) KRS 61.810(1)—a private (unpublicized) *meeting of a quorum* of the members of a public agency at which public business is discussed *OR* action is taken;

2) KRS 61.810(2)—a private *series of less than quorum meetings* attended by members of the agency collectively constituting a quorum held for the purpose of avoiding the requirements of the Act.
“Public agency” is broadly defined in eight statutory subparts and includes “committees, subcommittees, ad hoc committees, [and] advisory committees” created by a public agency. (KRS 61.805(2)).

“Public business,” the courts have held, “is not simply any discussion between two officials of the agency. Public business is the discussion of the various alternatives to a given issue about which the agency has the option to take action.”

GENERAL REQUIREMENTS FOR PUBLIC AGENCY

• Record minutes of meeting and make minutes available upon request

• Place no conditions on public attendance and provide meeting room conditions that allow effective public observation (with a particular focus on space requirements, seating capacity, and acoustics)

• Permit news media coverage

• Adopt a regular meeting schedule and make copies of the schedule available upon request (Regular v. Special meetings)

• Conduct meetings at times and places convenient to public
“The open meetings statutes are designed to prevent government bodies from conducting business at such inconvenient times or locations as to effectively render public knowledge or participation impossible, not to require such agencies to seek out the most convenient time or location.”

Court determines that fiscal court did not violate Open Meetings Act when it conducted a meeting at a location near a busy county festival, “literally the epicenter of activity,” where there was nothing in the record “to indicate that persons wishing to attend or participate in the proceeding were effectively prevented from doing so.”
“Meetings” Defined: Regular v. Special

“Meetings” are “all gatherings of every kind, regardless of where the meeting is held, and whether regular or special and informational or casual gatherings held in anticipation of or in conjunction with a regular or special meeting.”

- Regular meetings are those that appear on the meeting schedule adopted by the agency and made available to the public upon request
- **Regular meetings**--No notice or agenda required and not restricted to agenda topics
- Special meetings are called meetings or rescheduled regular meetings
- **Special meetings**--Notice and agenda required and restricted to discussion of specific agenda topics
Examples

Subject to the Open Meetings Act

• Work sessions
• Retreats
• Discussions of public business occurring before or after meeting
• Committee meetings

Not subject to the Open Meetings Act as long as public business is not discussed

• Social gatherings
• Church services
• Sporting events
• Conferences sponsored by an outside entity
• Chance encounters

REMEMBER: Public business is “the discussion of the various alternatives to a given issue about which the [agency] has the option to take action.”
REQUIREMENTS FOR HOLDING SPECIAL MEETINGS

• Who May Call: Presiding Officer or Majority of Members

• Notice Requirements: Date, Time, Place, and Agenda

• Notice Requirements: Delivery (members/media) and Posting (conspicuous place)

• Emergency Situations: Exception to Notice Requirements (RARELY permissible)
Email Notification of Special Meetings

Effective July 15, 2008, public agencies may transmit written notice of special meetings by email to all public agency members and media organizations that: (1) file a written request with the agency (2) include their email addresses.
REQUIREMENTS FOR CONDUCTING CLOSED SESSIONS UNDER ONE OF 13 EXCEPTIONS

• Notice (General nature of business to be discussed, reason for closed session, and exception authorizing)

• Motion (Made and carried in open session)

• No Final Action

• Matters Discussed (Only those publicly announced in open session)
“KRS 61.815 provides that prior to going into an executive session, the public body must state the specific exception contained in the statute which is relied upon in order to permit a secret session. There must be specific and complete notification in the open meeting of any and all topics which are to be discussed during the closed meeting.”

Ratliff at 924

“Notice must be given in a regular open meeting of the general nature of the business to be conducted in the closed session and the reason for the secrecy. Closed sessions may be held only upon adoption of a motion for that purpose made in open, public session.”

Reed v. City of Richmond
582 SW2d 651, 654 (1979)
Commonly Cited Exceptions Authorizing a Closed Session

The exceptions to the open meetings laws are not to be used to shield the agency from unwanted or unpleasant public input, interference, or scrutiny.

*Floyd County Bd. of Ed. v. Ratliff* at 924

The courts of the Commonwealth must narrowly construe and apply the exceptions so as to avoid improper or unauthorized closed, executive, or secret meetings.

*Floyd County Bd. of Ed. v. Ratliff* at 923
KRS 61.810(1)(b)

Deliberations on the future acquisition or sale of real property by a public agency, but only when publicity would be likely to affect the value of a specific piece of property to be acquired for public use or sold by a public agency[.]

- “Only when a public agency is discussing a specific piece of property. . . And the discussion if made public would likely affect the price of that property, can the matter be discussed in a closed session. Confidentiality is only permissible when the public interest will be directly affected financially.” (OAG 80-530)
- If the terms of the purchase or sale have been disclosed, the exception is not applicable. . . .
KRS 61.810(1)(c)

Discussions of proposed or pending litigation against or on behalf of the public agency.

- “This exception...applies to matters commonly inherent to litigation, such as preparation, strategy, or tactics....The litigation in question need not be currently pending and may be merely threatened. However, the exception should not be construed to apply ‘any time the public agency has its attorney present’ or where the possibility of litigation is still remote.”

  *Floyd County Bd. of Ed. v. Ratliff* at 924

- “There must be a direct suggestion of litigation conditioned on the occurrence or nonoccurrence of a specific event....The remote possibility of litigation is not enough to trigger the litigation exception.”

  *Carter v. Smith* 366 SW3d 414, 420 (Ky. 2012)

- Not applicable to agency counsel report on legal issue facing the agency, or other general legal guidance, unless related to proposed or pending litigation against or on behalf of agency.
KRS 61.810(1)(f)
Discussions or hearings which might lead to the appointment, discipline, or dismissal of an individual employee, member, or student….This exception shall not be interpreted to permit discussion of general personnel matters in secret.

• “The personnel exemption…does not allow a general discussion…when it involves multiple employees.”

   *Floyd County Bd. of Ed. v. Ratliff* at 924

• “Appointment, discipline, or dismissal are the only personnel matters a public agency may discuss in closed session. Discussions of other matters are expressly precluded.”

   *Carter* at 420

• Not resignations, not reorganizations, not pay raises, not elimination of positions unrelated to discipline or dismissal
KRS 61.810(1)(k)

Meetings which federal or state law specifically require to be conducted in privacy.

Examples include KRS 620.055(12)—External Child Fatality and Near Fatality Review Panel; KRS 211.678(1)—Perinatal Advisory Committee; 20 USC Section 1232g—Family Educational Rights and Privacy Act.
KRS 61.810(1)(m)

Public agencies may close that portion of a meeting devoted to a discussion of a specific public record exempted from disclosure under KRS 61.878(1)(m) [the homeland security exception].
Use of personal electronic devices in conducting public business

• Some states treat such communications as public record, focusing on whether the record was prepared or used by members of a public agency in conducting public business rather than on where, how, or on what device the communication was created.

• Such communications also implicate open meetings as a secret meetings of a quorum of members or a series of less than quorum meetings (secret rolling quorum meetings)

• Email, text messages, instant messages, social media postings and messages, and online discussion board posts relating to public business have both open records and open meetings implications even if conducted on personal devices.

• KRS 61.870(1) and 61.810(2) support a similar resolution of these legal issues in Kentucky.
THINK BEFORE YOU WRITE !!

- Email
- Text
- Instant message
- Post on Facebook or social media site
- Participate in online discussion board
- Etc., etc., etc.

- If the matters under discussion relate to the agency’s public business, those messages may be accessible under the Open Records Act and may run afoul of the Open Meetings Act.
Does KRS 61.826 authorize remote participation by Skype?

(1) A public agency may conduct any meeting, other than a closed session, through video teleconference.

(2) Notice of a video teleconference shall comply with the requirements of KRS 61.820 or 61.823 as appropriate. In addition, the notice of a video teleconference shall:
   (a) Clearly state that the meeting will be a video teleconference; and
   (b) Precisely identify the video teleconference locations as well as which, if any, location is primary.

(3) The same procedures with regard to participation, distribution of materials, and other matters shall apply in all video teleconference locations.

(4) Any interruption in the video or audio broadcast of a video teleconference at any location shall result in the suspension of the video teleconference until the broadcast is restored.
July 2, 2014 miscellaneous letter issued by the OAG

• Reaffirms longstanding view that “use of speakerphone teleconferencing to remotely participate in [public] meetings is impermissible under Kentucky law.”

• “Neither audio nor video teleconferencing may be used to allow a member to participate in closed session meetings, and video teleconferencing may be used for open session meetings subject to the requirements of the Open Meetings Law.”
Requirements

• Any location where a member is present and participating is a “location” which must be treated as a meeting site and to which the public must be admitted.
• Notice of teleconferenced meeting must identify all locations as meeting sites.
• No closed sessions
• Interruption in video or audio broadcast must result in suspension of meeting
• All members and all attendees must be able to simultaneously both see and hear all participating members.
Legal Challenges to Agency Action

• **Complaint**
  – Directed to agency’s presiding officer
  – State the circumstances constituting a violation
  – Propose remedial action

• **Agency Response**
  – Written response
  – Within three business days
  – If agency agrees to remedy violation, a statement that it will comply
  – If agency rejects proposed remedial action, citation to specific statute(s) supporting its position, and brief explanation of the statute(s)’ application
  – Issued by presiding officer or under his authority
ROLE OF ATTORNEY GENERAL

• Appeal to Attorney General/Circuit Court (must be initiated within 60 days of denial or agency nonresponse per KRS 61.846(2))
• Notification
• Request for Additional Documentation
• Decision Stating Whether Agency Violated Open Meetings Act
• Appeal of Attorney General’s Decision within Thirty Days
Penalties

- Any person who knowingly attends a meeting of a public agency of which he is a member that violates the open meetings act can be fined up to $100.00 (KRS 61.991(1))
- The prevailing party in an open meetings lawsuit can be awarded costs, including reasonable attorneys fees, as well as up to $100.00 for each violation (KRS 61.848(6))
- Any formal action taken at a meeting that does not substantially comply with the open meetings act is voidable and can be voided by a court (KRS 61.848(5))
Webster County Board of Education v. Franklin at 436

Clearly, the rationale behind this reasoning is that any ability to ratify actions done improperly renders the Open Meetings Act meaningless. Ratification cannot be allowed to legitimize unauthorized conduct at an improperly closed session.

[An agency] cannot ratify an action that never [legally] took place.
Violations of the Open Meetings Act may be based on

1. A private meeting of a quorum of the members of a public agency at which public business is discussed or action is taken (KRS 61.810(1))
2. A series of less than quorum meetings attended by members of the agency collectively constituting a quorum and held for the purpose of avoiding the requirements of the Open Meetings Act (KRS 61.810(2))
3. Failure to adopt a schedule of regular meetings or inadequate notice of special meetings (KRS 61.820 and KRS 61.823)
4. Deviation from agenda for special meetings (KRS 61.823(3))
5. Failure to observe requirements for going into closed session (KRS 61.815(a)-(d))
6. Improper topic for closed session or discussion of topics in closed session that were not publicly announced before entering closed session (KRS 61.810(1)(a)-(m) and (KRS 61.815(1)(d)))
Violations of the Open Meetings Act may be based on

7. Taking final action in closed session (KRS 61.815(1)(c))
8. Conducting meetings at times or places that are inconvenient to the public (KRS 61.820)
9. Failure to properly record minutes of meetings and to afford the public access to the minutes no later than immediately following the next meeting of the agency (KRS 61.835)
10. Placing conditions on attendance, requiring attendees to identify themselves, failing to provide meeting room conditions that allow effective public observation, and refusing to permit the media or a member of the public to record the meeting (KRS 61.840)
11. Failure to respond to an open meetings complaint (KRS 61.846(1))
Ruling delayed on Enquirer’s suit

Judge says Ohio’s open-meetings statute is complicated, more research needed

BY TIM BONFIELD
The Cincinnati Enquirer

A judge refused to rule Friday on a legal motion by The Enquirer challenging the closed-door methods Cincinnati City Council used in the ouster of City Manager Gerald Newfarmer.

After hearing more than an hour of arguments, Judge Thomas Crush of Hamilton County Common Pleas Court said he was taking the matter under advisement.

Ohio’s open-meetings law is so complicated that he needs to do more legal research before ruling on The Enquirer’s motion, he said. Another hearing has been scheduled for March 19.

“Interpreting this law is very difficult. Whoever wrote it should be taken out and shot. And they don’t need to have an executive session to do it.”

Judge Thomas Crush
Hamilton County Common Pleas Court

Interpreting this law is very difficult. Whoever wrote it should be taken out and shot. And they don’t need to have an executive session to do it.

The Enquirer’s lawsuit claims that an executive session held Monday was illegal. At least five council members have confirmed that during the meeting members voted 6-3 to fire Newfarmer, a move that led to Newfarmer’s resignation Tuesday. The vote and the alleged failure to notify Newfarmer of the meeting violate the state’s sunshine laws, the suit contends.

Newfarmer leaves his $141,933-a-year post after 2½ years. He remains on the city’s payroll until June and will receive $70,000 in severance pay.

The Enquirer is asking Crush to prohibit any violation of the sunshine law and invalidate any formal actions taken by council.

Attorneys for the city on Friday denied The Enquirer’s allegations. They filed an affidavit from Marilyn Kaiser, chief deputy clerk of council, who stated that “no further formal action of any kind was taken” after the executive session.

Among the issues debated Friday was whether Newfarmer had a right to request a public hearing before council discussed his employment status in an executive session.

A single paragraph in state law spells out that right, Enquirer attorney Richard Creighton contended. But Newfarmer could not request a public hearing because the city did not notify him of the executive session, Creighton said.

Karl Kadon, deputy city solicitor, said, “I don’t know if he was notified or not. To us, that is irrelevant.”

The city contends that the right to request a hearing applies only to executive sessions called to investigate charges or complaints against city employees — not to discuss terminations or demotions.

Nancy Johnston, open-government coordinator for the Ohio attorney general’s office, disagreed with the city’s view in a phone interview after the hearing.

“I have never heard the interpretation that would limit (a right to a hearing) just to the investigation of charges and complaints,” she said. All employees, she said, are entitled to some degree of due process before termination.

Creighton said Friday the newspaper was not trying to defend Newfarmer. Instead, it was concerned that city officials might have abused their powers.

“The sunshine law stands for the rights of the people. That’s The Enquirer’s sole objective in this case,” Creighton said.

Jeff Harrington contributed to this article.
July 2, 2014

Rosemary Miller
General Counsel
Jefferson County Public Schools
P.O. Box 34020
Louisville, Kentucky 40232-4020

Re: Remote Participation of Jefferson County Board of Education member in Board meetings

While this is not a formal Opinion of the Attorney General provided pursuant to KRS 15.025, we hope the views expressed herein will be of some assistance. While our office very rarely provides opinions regarding Open Records issues, this is one of the few cases where the relevant agency needs advice that likely cannot be obtained via the Open Records appeal process set out in KRS Chapter 61. You have posed two questions: 1) whether a member of the Jefferson County Board of Education (the “Board”) may participate in a closed-session meeting of the Board by means of either a speakerphone teleconferencing or video teleconferencing; and 2) whether a member of the Board may participate in an open-session meeting of the Board using video teleconferencing. We advise that 1) a Board member may not participate in a closed-session meeting of the Board by means of speakerphone teleconferencing or video teleconferencing and 2) a Board member may participate in an open-session meeting of the Board by means of video teleconferencing, only if the procedural and logistical requirements of the Kentucky Open Meetings Law are still met.

You inform us that closed-session meetings of the Board take place at the Board’s offices in Louisville, and are sometimes conducted before or after regularly-scheduled meetings for the purpose of discussing a subject that is within an exception to the Kentucky Open Meetings Law, and sometimes as special meetings at which the only item for discussion is such a subject.
Occasionally, a closed session will be scheduled by the Board for a time when an individual Board member is unable to be physically present at the Board’s offices. You state that the ability for such a member to participate in those sessions, including being counted for a quorum and casting votes, remotely through either speakerphone teleconferencing (in which all members can simultaneously hear each other and members can speak in turn) or video teleconferencing (in which all members can simultaneously both hear and see each other) would be helpful to the Board’s fulfillment of its statutory duties.

Likewise, you inform us that situations arise in which a Board member is unable to be physically present at the Board’s offices for a regularly-scheduled open meeting. You state that the ability for such a member to participate in the sessions, including being counted for a quorum and casting votes, remotely through video teleconferencing (in which all members can simultaneously both hear and see each other) would be helpful to the Board’s fulfillment of its statutory duties. Under the scenario you have presented, most of the Board members and the public would be physically present at the Board’s meeting space, while one or more members attended remotely. At all times, the public and the members of the Board physically present would be able to see and hear the absent Board member on a large video screen, and the absent Board member would be able to see and hear the other Board members and the members of the public as a group on a video screen at his or her location. With these facts in mind, the following analysis will address your questions in turn.

The Board is a local board of education established pursuant to KRS 160.160, and is a “public agency” as that term is defined in the Kentucky Open Meetings Law. KRS 61.805. Accordingly, meetings of the Board are subject to the Open Meetings Law, KRS 61.800 et seq. When interpreting open meetings laws, courts employ a rule of strict construction. 02-OMD-206 (citing Floyd County Bd. of Ed. v. Ratliff, 955 S.W.2d 921 (Ky. 1997); E. W. Scripps Co. v. City of Maysoville, 790 S.W.2d 450 (Ky. App. 1990)). Furthermore, Kentucky law “clearly disfavors electronic participation in lieu of physical presence.” 02-OMD-206 (citing OAG 97-37).

First, Kentucky law clearly states that “[a] public agency may conduct any meeting, other than a closed session, through video teleconference.” KRS 61.826. Accordingly, a member may not attend a meeting of the Board in closed session by use of video teleconferencing.
Second, remote participation in a meeting held in closed session through the use of speakerphone teleconferencing is likewise impermissible. In your request letter, you cite heavily to OAG 82-179, which authorized members of the State Board of Education to participate remotely in special, closed meetings of the State Board of Education through the use of speakerphone teleconferencing. However, that opinion does not control here. OAG 82-179 was a heavily fact-based opinion that was expressly “confined to the facts of the particular question presented.” Those dispositive details included the fact that the State Board of Education met only once every two months, that its members may reside anywhere within the Commonwealth, and that the request to use speakerphone teleconferencing was limited to situations in which the State Board of Education was holding a meeting in closed session to consider disciplinary matters. Here, however, the Board meets twice monthly, its members all reside in Jefferson County, KY, and there is no subject-matter limitation on the requested use of speakerphone teleconferencing. Absent some express statutory authorization, it is the opinion of this office that a Board member’s use of speakerphone teleconferencing to remotely participate in Board meetings being held in closed session is impermissible under Kentucky law.

Finally, participation of a Board member in an open-session meeting of the Board using video teleconferencing is permissible but is still subject to the procedural and logistical requirements of the Open Meetings Act. As you point out, KRS 61.286 addresses the use of video teleconferencing for meeting of public agencies:

(1) A public agency may conduct any meeting, other than a closed session, through video teleconference.
(2) Notice of a video teleconference shall comply with the requirements of KRS 61.820 or 61.823 as appropriate. In addition, the notice of a video teleconference shall:
   (a) Clearly state that the meeting will be a video teleconference; and
   (b) Precisely identify the video teleconference locations as well as which, if any, location is primary.

2 http://www.jefferson.k12.ky.us/Board/BoardMap/Board_Members.html (retrieved May 29, 2014)
(3) The same procedures with regard to participation, distribution of materials, and other matters shall apply in all video teleconference locations.

(4) Any interruption in the video or audio broadcast of a video teleconference at any location shall result in the suspension of the video teleconference until the broadcast is restored.

The plain meaning of the statutory language “is presumed to be what the legislature intended, and if the meaning is plain, then the court cannot base its interpretation on any other method or source.” Carter v. Smith, 366 S.W.3d 414, 424 (Ky. 2012) (quoting Stephe r v. Conliffe, 170 S.W.3d 307, 308–09 (Ky. 2005)). Here, 1994 Ky. House Bill 315 and the statute it created expressly provides that a “public agency may conduct any meeting other than a closed session, through video teleconference.” (Emphasis added.) It is clear, then, that the Board has statutory authority to conduct a meeting in open session in which one or more Board members participate remotely through video teleconference. However, this provision does not abrogate the procedural and logistical requirements contained in the Kentucky Open Meetings Act.

You state in your letter that “KRS 61.826 appears to contemplate a situation in which members of the public would be able to see and hear the meeting only by means of video screens at locations identified by the public agency” and that “[i]n such a situation, it is likely that the members of the board of the public agency would be physically present for the meeting in a location that is not accessible to any member of the public.” This contention is unsupported by the legislative history of 1994 Ky. House Bill 315. See Minutes, House Comm. on State Government, Third Meeting, 1994 Reg. Sess., p. 3 (Feb. 3, 1994). On the contrary, the requirements of KRS 61.820, which include that “[a]ll meetings . . . shall be held at specified times and places which are convenient to the public,” must still be met. The statutory definition of video teleconference is “one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment.” KRS 61.805 (emphasis added). While you state in your letter that “the Board’s offices would be the only video teleconference location,” the statutory language suggests that any location where a Board member is present and participating is a “location” for the purposes of the Kentucky Open Meetings Law. Accordingly, pursuant to KRS 61.820, the public must be given notice of all locations where video
teleconferencing will be employed and the public must be granted the same access to all teleconference locations.

While it may be the case that the use of technology in this context could aid the Jefferson County Board of Education in the fulfillment of its statutory duties, "the right of the public to be informed transcends any loss of efficiency." *Lexington Herald-Leader Co. v. Univ. of Ky. Presidential Search Comm.,* 732 S.W.2d 884, 886 (1987). This office concludes that neither audio nor video teleconferencing may be used to allow a member to participate in closed-session meetings, and video teleconferencing may be used for open-session meetings, subject to the requirements of the Kentucky Open Meetings Law. Please contact our office if you have any additional questions regarding this matter.

Yours very truly,

[Signature]

JACK CONWAY
ATTORNEY GENERAL

Joseph A. Newberg, II
Assistant Attorney General
1. UNDERSTANDING RECORDS MANAGEMENT
2. ACCESS TO PUBLIC RECORDS
3. RECORDS RETENTION SCHEDULES
4. DESTRUCTION OF OBSOLETE RECORDS
KRS 171.410 – 740

• BROAD RECORDS MANAGEMENT AUTHORITY

725 KAR 1:030

• SCHEDULING PUBLIC RECORDS FOR RETENTION AND DISPOSAL PROCEDURES.

725 KAR 1:061

• RECORDS RETENTION SCHEDULES; AUTHORIZED SCHEDULES
KRS 171.410 says public records are “all books, papers, maps, photographs, cards, tapes, disks, diskettes, recordings and other documentary materials, regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency.”
RECORD FORMATS

► Paper

► Microfilm/Microfiche

► Video/Audio recordings
  - Meetings
  - Surveillance

► Electronic Records - Computer
  – CDs
  – Computer Tape
  – DVDs
  – External Drive

► Digital Imaging
  – Born Digital
  – Scanned
Systematic Control of recorded information that is created or received in the course of your agency’s business.

Systematic control is not throwing a box full of records in the basement, attic, storage building and forgetting it!
RECORDS MANAGEMENT

• Protects and preserves records

• Allows access to records for their entire life.

• Keeps files from getting cluttered

• Use of Other Formats to Store Records
  – Records Storage in New Technologies
  – Microfilm Long Term Records

• Saves money by freeing up space in cabinets etc.

• Reduces liability by destroying records when authorized (Retention Schedule).
RECORDS MANAGEMENT PROGRAM

Sound Records Management Essentials

- Local Support – From the Top Down

RECORDS MANAGEMENT PLAN

- Appointment of a Records Manager
- Conduct a Records Inventory
  - Attics, Basements, Out Buildings etc.
- Adoption/Use of Records Retention Schedule
- Control & Destruction of Obsolete Records
Life Cycle - Creation, Maintenance & Disposition

- Creation or receipt

- Maintenance
  - Active records
  - Inactive records

- Ultimate Disposition (destruction or long term preservation)
IS IT STILL A PAPER WORLD?

RECORDS

• Active – Use at least once or twice a month

• Inactive - Those that are not used very often.

What should I do with the Inactive Records?

Depends on Scheduled Retention Period
RECORDS MANAGEMENT

PAPER RECORDS

• May want to consider an inactive storage room or facility.
  – Box your inactive records and identify them
  – Store in cubic foot boxes on metal shelving
  – Identify contents on boxes
    • Title
    • Inclusive dates
    • Destruction date
  – Create a simple finding aid
    • Number boxes
    • List boxes with record series title
    • Location in storage area
RECORDS MANAGEMENT

• WHY DEVELOP AN INACTIVE STORAGE AREA?
• Saves Space in Offices
• Easy/Fast Access
• Timely Destruction
• Cost Effective
“Agency Specific”

- Municipal
- County/Judge Ex
- County Clerk
- Sheriff
- County Attorney
- Jailer
- Coroner
- Area Dev. District
- Health Departments
- Public Schools

“General”

- Local Government General Records
  - Personnel
  - Payroll
  - Law Enforcement
  - Fire Dept.
  - EMS
  - 911
  - Administration
  - Financial

- All are found on the KDLA website:
- [http://kdla.ky.gov/records/retentionschedules/Pages/LocalRecordsSchedules.aspx](http://kdla.ky.gov/records/retentionschedules/Pages/LocalRecordsSchedules.aspx)
### Official Minutes (L4938)

**Function and Use:**

As required by KRS 61.835, minutes of actions taken by any public agency, with an accurate record of votes and actions at such meetings, shall promptly be recorded and shall be open to public inspection at reasonable times no later than immediately following the next meeting of the body. These are minutes of the legislative body of local governments. The legislative bodies include city councils, city commissions, boards of council, board of alderman and county fiscal courts.

**Access Restrictions:** None

**Contents:** This record series may contain the date, time, place, attendance, approval of prior meeting’s minutes, motions made, votes, actions taken.

**Retention and Disposition:** Retain Permanently

### Index to Official Minutes (L4939)

**Function and Use:**

This record is used as a finding aid for Official Minutes.

**Access Restrictions:** None

**Contents:** May contain subject, cross reference, book number, page number, date of meeting

**Retention and Disposition:** Retain Permanently

### Audio/Video Recordings of Official Meetings (L4940)

**Function and Use:**

This series documents the actual proceedings of public meetings held by any local government body or its entities. The audio tapes are generally used by the recording secretary as a transcribing aid. The video tapes are generally made available to local access television stations for public broadcast. Minutes usually contain the date, time, place, attendance, approval of prior meeting’s minutes, motions made, votes, and actions taken, however, according to KRS 61.835, minutes need only contain an accurate record of votes and actions. Because additional discussion need not be included as part of the official record, after the minutes are formally accepted at the following meeting, the tapes can be destroyed or used again.

**Access Restrictions:** None

**Contents:** Actual recording of proceedings

**Retention and Disposition:** Destroy or re-use 30 days after minutes have been transcribed and approved, unless challenged. Note: If minutes are challenged, recordings should be retained until resolution.
<table>
<thead>
<tr>
<th>Records Title and Description</th>
<th>Function and Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>L5000 Accounts Receivable</td>
<td>This record series is used to document fee receipts, tax receipts, receipts from parking, park and recreation receipts and any other monies received through daily transactions. These are filed according to fund/account and are maintained to document all income from all sources.</td>
</tr>
<tr>
<td>Access Restrictions</td>
<td>None</td>
</tr>
<tr>
<td>Contents</td>
<td>This record series may contain receipts, billing data and supporting documentation.</td>
</tr>
<tr>
<td>Retention and Disposition</td>
<td>Retain 3 years. Destroy after audit.</td>
</tr>
<tr>
<td>L5001 Banking Records</td>
<td>This record series documents all banking transactions, including payroll and is maintained to verify the checks written and reconciliation of accounts. It is also used as an audit trail and a reference.</td>
</tr>
<tr>
<td>Access Restrictions</td>
<td>None</td>
</tr>
<tr>
<td>Contents</td>
<td>This record series may contain the cancelled check and warrants, bank reconciliation, bank statement, check stubs, duplicate copies of checks and deposit ticket.</td>
</tr>
<tr>
<td>Retention and Disposition</td>
<td>Retain 3 years. Destroy after audit.</td>
</tr>
<tr>
<td>Records Title Series and Description</td>
<td>Function and Use</td>
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<tr>
<td>L5011 Accounts Payable File</td>
<td>This record series is used to document the purchasing and bill paying process. The process is usually started by requisitioning something for purchase. A requisition is issued and this triggers a purchase order for the item or service. A file is maintained with this purchase order and when a bill for the purchase is received it is placed in the same file and is paid. May include list of claims, claims, claim stub book, requisition, purchase order, vendor invoice, receipts, travel requests, voucher copies, check copies, receiving orders, receiving reports, cash receipt register, treasurers receipt book and supporting documents. This series is used to document the requisitioning, purchasing and remitting process.</td>
</tr>
<tr>
<td>Access Restrictions Contents</td>
<td>None</td>
</tr>
<tr>
<td>Retention and Disposition</td>
<td>Retain 3 years. Destroy after audit.</td>
</tr>
<tr>
<td>Records Title and Description</td>
<td>Function and Use</td>
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</tbody>
</table>
| **L5022 Time and Attendance Record File (V)** | This record series is used to document the official time worked by the employees during a specific pay period. It is used to input data and as an instrument to calculate pay for employees. May include the Payroll Sheet, Time Sheet, Time Card and Daily Attendance Report. Begins the payroll process for each pay period.  
Access Restrictions: None  
Contents: This record series contains the payroll sheet which is a cumulative record of employees and the time they worked during the pay period. This data is collected from the time sheets. This record series also contains the time sheet for each individual employee. Each of these contain the name of employee, time worked, name of department, authorized signature, payroll beginning date, payroll ending date, dates worked, hours worked, totals and certifications.  
Retention and Disposition: Retain 3 years. Destroy after audit. |
| **L5797 Payroll Register - Year End (V)** | This record series is used to document the earnings and withholdings of employees from pay period to pay period and is a year to date accumulation of the payroll. The first pay period is considered to be the master earning record of all employees.  
Access Restrictions: None  
Contents: This record series contains the run date, name of employee, directory information, gross pay, net pay, withholdings, rate of pay, each pay period with year to date totals, total deductions.  
Retention and Disposition: Retain 70 years from date first employed. Then destroy. |
| **L5798 Payroll Register - Pay Period Change Date: 12/9/2004 (V)** | This record series is used to document the earnings and withholdings of employees for each pay period and must be kept for at least three years. This is used to compile year end Payroll Register.  
Access Restrictions: None  
Contents: This record series contains the run date, name of employee, gross pay, withholdings, rate of pay, year to date totals, total deductions.  
Retention and Disposition: Retain 3 years. Destroy after audit |
<table>
<thead>
<tr>
<th>Records Title</th>
<th>Function and Use</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>L5034</strong> Personnel File</td>
<td>This record series is used to document an individual's employment with a local government. It is the master file and the primary source of their employment history. This record should document all the employment history which is deemed significant in determining job performance. These records are considered confidential according to KRS 61.878 (1)(a) and 61.884.</td>
</tr>
<tr>
<td><strong>Contents</strong></td>
<td>This record series may contain the application, resignation, exit interview, annual evaluations, attendance records, resume, disciplinary actions, worker's comp. Information, pension reports, copies of social security card, copies of immigration forms, education verification, correspondence and vacation and sick leave reports.</td>
</tr>
<tr>
<td><strong>Retention and Disposition</strong></td>
<td>Destroy the following 60 years from date of hire: 1) Applications for positions 2) Name 3) Last known address 4) Social security # 5) Letters of resignation 6) Starting and ending dates of employment 7) Retirement information 8) Verification of positions held.</td>
</tr>
</tbody>
</table>

**L5035** Personnel Medical File | This record series is used to document the physical condition of an employee when first hired and for subsequent medical requirements completed by a physician, nurse, or other health care person or technician. Used to document physicals and may include drug testing and screening, psychological profiles and CDL physical. These include blood test results as well. The volume and use of these records varies. These records are considered confidential according to the federal Privacy Act and KRS 61.870-884. |
<p>| <strong>Contents</strong> | This record series includes medical and employment questionnaires or histories (including job description and occupational exposures), results of medical exams and lab tests (including chest and other x-ray exams taken for the purposes of establishing a baseline or detecting occupational illness, and all biological monitoring not defined as an &quot;employee exposure record&quot;. Included are medical opinions, diagnoses, progress notes and recommendations, descriptions of treatments and prescriptions and employer's medical complaints. |
| <strong>Retention and Disposition</strong> | Destroy 30 years after termination of employment |
|  | With the following exceptions: |
| A. Health insurance claims maintained separately | *Destroy 3 years after termination of employment |
| B. First aid records of one time treatment which is completed by a person who is not a physician, nurse, or other health care personnel. These do not include health histories and are for minor scratches, cuts, burns, and the like. | *Destroy 3 years after termination of employment |
| C. Employees who have worked less than a year and their medical records are returned to them upon termination of employment. | *Return the medical records to the employee upon termination. If copies are provided, destroy the originals upon employee termination. |</p>
<table>
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<tr>
<th>Records Title and Description</th>
<th>Function and Use</th>
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<tbody>
<tr>
<td>L826 Personnel Hazardous Materials Exposure File</td>
<td>This record series is used to document local government agency personnel exposure to hazardous materials, lead, chemicals, toxic substances, blood borne pathogens, biological agents, bacteria, virus, fungus, radiation or other related conditions. Paragraph (d)(1)(ii) of 29 CFR 1910.1020 states that &quot;Each employee exposure record shall be preserved and maintained for at least thirty(30) years&quot;.</td>
</tr>
<tr>
<td>Access Restrictions</td>
<td>KRS 61.878 (1)(a)</td>
</tr>
<tr>
<td>Contents</td>
<td>This record series contains name of employee, date of exposure, amount, time, type of exposure and actions taken.</td>
</tr>
<tr>
<td>Retention and Disposition</td>
<td>Destroy 30 years from date of each exposure</td>
</tr>
</tbody>
</table>
• Destruction periods are determined from the records retention schedule.

• One copy must be designated as the “record copy” to meet retention requirements.
Normal destruction of records must be suspended in cases of litigation, pending litigation, or ongoing open records disputes.
• Use KDLA Destruction Certificates. 
  [Link](http://kdla.ky.gov/records/recretentionschedules/Pages/default.aspx)

• Keep documentation of the destruction in case you need to produce it.

• **Remember:** Regular destruction can be suspended by litigation, pending litigation, or ongoing open records disputes.
# Records Destruction Certificate

**Kentucky Department for Libraries and Archives, Public Records Division**

**300 Cuffee Tree Road, P.O. Box 537, Frankfort Kentucky 40602**

---

**Cabinet/Local Jurisdiction:**

**Department/Local Government Office:**

**Division:**

**Branch/Unit:**

**Schedule Date:**

**Destruction Date:**

**Destruction Method:** Recycle

For records destroyed at agency only, per approved retention schedules

<table>
<thead>
<tr>
<th>Series No.</th>
<th>Title of Records</th>
<th>Date Span</th>
<th>Volume</th>
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</table>

**Total Volume of Records Destroyed**

**Approvals and Certifications**

Before destroying records not listed on the agency's retention schedule or applicable general schedules, approval must be obtained from the State Archives and Records Commission.

I hereby certify that the records described above have been destroyed.

Records Officer/Custodian  Date

---

**Kentucky**

**UNBRIDLED SPIRIT**
ACTUAL DESTRUCTION

- CONFIDENTIAL RECORDS
  - SHRED OR BURN

- OTHER RECORDS
  - LANDFILL

- RECYCLE VENDORS
  - DON’T LET RECORDS OUT OF SIGHT
Trace Kirkwood, Manager
Local Records Program
502-564-1724
502-229-8529
trace.kirkwood@ky.gov
<table>
<thead>
<tr>
<th>Records Title and Description</th>
<th>Function and Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>L4938 Official Minutes (V)</td>
<td>This record series documents minutes of actions taken by any public agency as required by KRS 61.835, with an accurate record of votes and actions at such meetings, shall promptly be recorded and shall be open to public inspection at reasonable times no later than immediately following the next meeting of the body. These are minutes of the legislative body of local governments. The legislative bodies include, but are not limited to: city councils, city commissions, boards of council, board of alderman and county fiscal courts. Access Restrictions: None. Contents: This record series may contain: Date, time, place, attendance, approval of prior meeting's minutes, motions made, votes, actions taken. Retention and Disposition: Retain permanently.</td>
</tr>
<tr>
<td>L4939 Index to Official Minutes (V)</td>
<td>This record series documents the finding aid (Index) for Official Minutes. Access Restrictions: None. Contents: This record series may contain: Subject, cross reference, book number, page number, date of meeting. Retention and Disposition: Retain permanently.</td>
</tr>
<tr>
<td>L4940 Audio/Video Recordings of Official Meetings Change Date: 9/11/2003</td>
<td>This record series documents the actual proceedings of public meetings held by any local government body or its entities. The audio tapes are generally used by the recording secretary as a transcribing aid. The video tapes are generally made available to local access television stations for public broadcast. Minutes usually contain the date, time, place, attendance, approval of prior meeting's minutes, motions made, votes, and actions taken, however, according to KRS 61.835, minutes need only contain an accurate record of votes and actions. Because additional discussion need not be included as part of the official record, after the minutes are formally accepted at the following meeting, the tapes can be destroyed or used again. Access Restrictions: None. Contents: This record series may contain: Audio/video recording of proceedings. Retention and Disposition: Destroy or re-use 30 days after minutes have been transcribed and approved, unless challenged. Note: If minutes are challenged, recordings should be retained until resolution.</td>
</tr>
<tr>
<td>L4941 Ordinances (V)</td>
<td>This record series documents an official action of city and county legislative bodies, which is a regulation of a general and permanent nature and enforceable as a local law or is an appropriation of money. The ordinance shall embrace only one subject and shall have a title that clearly states the subject. No ordinance shall be enacted without two separate readings and publication in the local newspaper unless there is an emergency. The ordinances are to be recorded in a minute book or an ordinance book in the order adopted and indexed in a composite index or maintained in a code of ordinances. Access Restrictions: None. Contents: This record series may contain: Date, title of the ordinance, subject of the ordinance, members present, the body of the ordinance, # of the ordinance, signatures of the presiding officer and the person responsible for the safe keeping of the record. Retention and Disposition: Retain permanently.</td>
</tr>
<tr>
<td>Records Title and Description</td>
<td>Function and Use</td>
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</tr>
<tr>
<td><strong>L4996 Periodic Financial Statements</strong></td>
<td>This record series documents the financial status of the local government for the governing body. These statements are prepared and submitted to the legislative body by the executive authority after the adoption of the budget ordinance. They shall include budgetary comparisons of each governmental fund for which an annual budget has been adopted. Such reports may be submitted monthly or quarterly. Access Restrictions: None. Contents: This record series may contain: Financial balance for each account and the entries that go into calculating those amounts. All transactions are posted. Retention and Disposition: Retain for three (3) years, then destroy after audit.</td>
</tr>
<tr>
<td><strong>L4997 Asset/Equipment Inventory File</strong></td>
<td>This record series documents assets (equipment, office furniture, autos and other items owned by the local government). It is updated when new items are purchased and when old items are sold or given away. Used to track each item and know its whereabouts and for the annual audit. Access Restrictions: None. Contents: This record series may contain: Name of the asset, a #, description of asset, equipment #, location of asset, purchase date, serial number, purchase order #, acquisition cost, current value and totals. Retention and Disposition: Retain for three (3) years after update is completed, then destroy after audit.</td>
</tr>
<tr>
<td><strong>L4998 Annual Audit</strong></td>
<td>This record series documents the receipts and expenditures of each fund of the local government and gives its financial condition. A summary of the annual audit is published in the local newspaper. A completed audit and all work papers are presented to the local legislative body for approval. Two copies of the annual audit are sent to the Department for Local Government for Information purposes. Usually a copy of an annual audit report which meets statutory requirements shall be considered satisfactory and final in meeting any official request to a local government for financial data. This audit may be conducted by the Auditor of Public Accounts or a certified public accountant. Access Restrictions: None. Contents: This record series may contain: Receipts and expenditures of each fund, whether local, state or federally funded, the date of the audit, the name of the auditor, year of the audit and an opinion to whether the statement of receipts and expenditures presents fairly the financial condition of the city. Retention and Disposition: Retain permanently.</td>
</tr>
<tr>
<td><strong>L4999 Periodic Audits (Daily, Monthly or Quarterly)</strong></td>
<td>This record series documents daily collection of fees, fines, and taxes collected for issuance of licenses, payroll tax receipts, insurance premiums received, property tax collections, parking ticket fines, etc. Monthly totals are then tallied. The information is then used to reconcile accounts and to verify postings. It basically serves as a daily check-out sheet for the financial section. Access Restrictions: None. Contents: This record series may contain: Date, license #, account #, total amounts paid, name, amount of payroll tax, penalty and interest, date paid, tax bill #, ticket #, license # of vehicle, copies of receipts. Retention and Disposition: Retain for one (1) month, then destroy.</td>
</tr>
<tr>
<td><strong>L5000 Accounts Receivable File</strong></td>
<td>This record series documents fee receipts, tax receipts, receipts from parking, park and recreation receipts and any other monies received through daily transactions. These are filed according to fund/account and are maintained to document all income from all sources. Access Restrictions: None. Contents: This record series may contain: Receipts, billing data and supporting documentation. Retention and Disposition: Retain for three (3) years, then destroy after audit.</td>
</tr>
<tr>
<td>Records Title and Description</td>
<td>Function and Use</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| L5011 Accounts Payable File   | This record series documents the purchasing and bill paying process. The process is usually started by requisitioning something for purchase. A requisition is issued and this triggers a purchase order for the item or service. This series is used to document the requisitioning, purchasing and remitting process. A file is maintained with this purchase order and when a bill for the purchase is received it is placed in the same file and is paid. May include list of claims, claims, claim stub book, requisition, purchase order, vendor invoice, receipts, travel requests, voucher copies, check copies, receiving orders, receiving reports, cash receipt register, treasurers receipt book and supporting documents. Access Restrictions None
Content                               | Retention and Disposition Retain for three (3) years, then destroy after audit.                                                                                                                                                                                                                                                               |
| L5012 Voucher Register         | This record series documents the issuance of a voucher for the purpose of issuing a payment for a purchase. The voucher is the authorization to pay.                                                                                                                                                                                                 |
Access Restrictions               | None                                                                                                                                                                                                                                                                                                                                                                                                      |
Contents                           | This record series may contain: Date, voucher #, purchase order #, invoice #, and amount.                                                                                                                                                                                                                                                      |
Retention and Disposition          | Retain for three (3) years, then destroy after audit.                                                                                                                                                                                                                                                                                         |
| L5013 Purchase Order/Requisition Reference and Tracking Instruments | This record series documents the issuance of purchase order numbers when a requisition is received. This is an easy tracking system for the life of the purchase order. This record series is used primarily for the tracking and referencing of the purchase orders. These instruments are also used to document those purchase orders that have not been paid and the status of the purchase order at any particular time. May include the Purchase Order Log, Requisition Log, Purchase Order Activity Report, Purchase Order Status Report and other reference material related to the tracking of the fiscal history of a purchase order whether active or inactive. Access Restrictions None
Contents                           | This record series may contain: Purchase order #, date of issuance, date or report, name of requesting agency or department, vendor #, vendor name, amount of each p.o., total amount, description of purchase, activity of the purchase order.                                                                                                                                 |
Retention and Disposition          | Retain for three (3) years, then destroy after audit.                                                                                                                                                                                                                                                                                         |
| L5014 Contracts and Agreements (V) | This record series documents the terms by which items and/or services were purchased and the responsibilities of each party.                                                                                                                                                                                                                     |
Access Restrictions               | None                                                                                                                                                                                                                                                                                                                                                                                                      |
Contents                           | This record series may contain: Names of the parties involved, date issued, terms, expiration date, signatures and date signed.                                                                                                                                                                                                                   |
Retention and Disposition          | Retain for fifteen (15) years after completion or termination and audit (KRS 413.090), then destroy.                                                                                                                                                                                                                                                                 |
### LOCAL AGENCY RECORDS RETENTION SCHEDULE

<table>
<thead>
<tr>
<th>Records Title and Description</th>
<th>Function and Use</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>L5020 Monthly Summary of Wages Earned</strong></td>
<td>This record series documents the monthly summary of wages for local government employees contributing to the Kentucky Retirement System. Attached to the summary report is a check to cover both the employee contribution rate of 5% and the employer contribution rate of 7.95%. Unlike other wage statements submitted to state and federal agencies, this agency (Ky. Retirement System) does not require an annual reconciliation. However, the monthly summary has a listing of individual employees attached to it.</td>
</tr>
<tr>
<td><strong>Access Restrictions</strong></td>
<td>None</td>
</tr>
<tr>
<td><strong>Contents</strong></td>
<td>This record series may contain: Agency #, period covered, total wages reported, employee's installment payment, employee contributions at 5%, total of installment payment and employer contribution, employer contribution at 7.95%, grand total for installment, employer and employee contribution, plus added payment for late reporting, city name, contact person, address, and phone #, certification that persons listed in report are full-time employees, date report filed, signature of reporting official followed by a listing of employees names with social security number, gross wages previous month, gross wages current month, installment purchase previous month, and installment purchase for the current month.</td>
</tr>
<tr>
<td><strong>Retention and Disposition</strong></td>
<td>Retain for three (3) years, then destroy after audit.</td>
</tr>
<tr>
<td><strong>L5022 Time and Attendance Record File (V)</strong></td>
<td>This record series documents the official time worked by employees during a specific pay period. It is used to input data and as an instrument to calculate payroll for employees. May include the Payroll Sheet, Time Sheet, Time Card and Daily Attendance Report. Begins the payroll process for each pay period.</td>
</tr>
<tr>
<td><strong>Access Restrictions</strong></td>
<td>None</td>
</tr>
<tr>
<td><strong>Contents</strong></td>
<td>This record series may contain: Payroll sheet which is a cumulative record of employees and the time they worked during the pay period. This data is collected from the time sheets. This record series also contains the time sheet for each individual employee. Each of these contain the name of employee, time worked, name of department, authorized signature, payroll beginning date, payroll ending date, dates worked, hours worked, totals and certifications.</td>
</tr>
<tr>
<td><strong>Retention and Disposition</strong></td>
<td>Retain for three (3) years, then destroy after audit.</td>
</tr>
<tr>
<td><strong>L5023 Individual Payroll Authority File (V)</strong></td>
<td>This record series documents the authorization to produce a payroll for each employee for a given pay period. This file is used for payroll purposes only and is maintained for each employee. Included in this are all authorizations needed in order to produce the payroll.</td>
</tr>
<tr>
<td><strong>Access Restrictions</strong></td>
<td>None</td>
</tr>
<tr>
<td><strong>Contents</strong></td>
<td>This record series may contain: W-4, K-4, date of employment, position, pay rate, pay period, appropriate tax information, authorized deductions, leave requests, record of credit checks from lending institutions, record of attachments or garnishments and health and welfare claims paid and time and attendance records.</td>
</tr>
<tr>
<td><strong>Retention and Disposition</strong></td>
<td>Retain for three (3) years after termination of employment or three (3) years after superseded and audit, then destroy.</td>
</tr>
<tr>
<td><strong>L5024 Wage and Tax Statements/W-2 (V)</strong></td>
<td>This record series documents the annual statement of wages and taxes paid an employee for federal and state tax purposes. The Internal Revenue Service requires an employer to prepare such a statement for each employee. The employee uses the statement in the preparation of the federal and state tax return. The local government maintains a copy in its file.</td>
</tr>
<tr>
<td><strong>Access Restrictions</strong></td>
<td>None</td>
</tr>
<tr>
<td><strong>Contents</strong></td>
<td>This record series may contain: Employer's l.d. number, control number, name, address, employees social security number, employee's name, address, wages and tips, federal income tax withheld, FICA, social security wages, Medicare wages and tips, Medicare tax withheld, social security tips, allocated tips, advance EIC payment, dependent care benefits, non-qualified plans, other, type of employee, employers state I.D. # state wages and tips, state income tax, locality name, local wages and tips, local income tax.</td>
</tr>
<tr>
<td><strong>Retention and Disposition</strong></td>
<td>Retain for five (5) years, then destroy after audit.</td>
</tr>
<tr>
<td>Records Title and Description</td>
<td>Function and Use</td>
</tr>
<tr>
<td>---------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>L5033 Reimbursing Employer's Quarterly Unemployment Wage Report</td>
<td>This record series documents the quarterly payment of unemployment insurance contributions by a local government to the Division of Unemployment Insurance. At minimum the report may be one page in length, but could be far larger depending upon the number of employees. A check may or may not be attached to the report depending on whether the local government decides to file it with the report or separately. Access Restrictions None Contents This record series may contain: KY employer ID number, federal employer ID number, employee name, social security number, gross wages, total for the pages, totals for all pages, number of employees by quarter with monthly totals, previous amount due, total amount due, number of pages in the report, remittance attached yes or no, signature line, title line, address and telephone number, date. Retention and Disposition Retain for three (3) years, then destroy after audit.</td>
</tr>
<tr>
<td>L5764 Leave Requests</td>
<td>This record series documents requests for leave by local government employees. This information may be forwarded to the payroll section which will use it to compile attendance. Access Restrictions None Contents This record series may contain: Name of applicant, agency, date of absence, reason for requested leave, attachments when necessary, signature of the employee and that of the physician and/or notary when required. Retention and Disposition Retain for three (3) years, then destroy after audit.</td>
</tr>
<tr>
<td>L5797 Payroll Register - Year End (V)</td>
<td>This record series documents the earnings and withholdings of employees from pay period to pay period and is a year to date accumulation of the payroll. The final pay period is considered to be the master earning record of all employees. Access Restrictions None Contents This record series may contain: Run date, name of employee, directory information, gross pay, net pay, withholdings, rate of pay, each pay period with year to date totals, total deductions. Retention and Disposition Retain for seventy (70) years from date first employed, then destroy.</td>
</tr>
<tr>
<td>L5798 Payroll Register - Pay Period Change Date: 12/9/2004 (V)</td>
<td>This record series documents the earnings and withholdings of employees for each pay period. This is used to compile the year end Payroll Register. Access Restrictions None Contents This record series may contain: Run date, name of employee, gross pay, withholdings, rate of pay, year to date totals, total deductions and payroll vouchers. Retention and Disposition Retain for three (3) years, then destroy after audit.</td>
</tr>
<tr>
<td>L5803 Family and Medical Leave Record File (V)</td>
<td>This record series documents those who apply for leave under the Family and Medical Leave Act (FMLA). Covered employers must grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12 month period for maternity, for adoption, to care for an immediate family member, or because of a serious health condition. This file is maintained separately from other payroll and personnel records. Access Restrictions KRS 61.878 (1)(a) Contents This record series may contain: Application, approval or denial letter, doctor's statements, payroll information and leave records. Retention and Disposition Retain for three (3) years, then destroy after audit.</td>
</tr>
</tbody>
</table>
RECORDS DESTRUCTION CERTIFICATE INSTRUCTIONS

The Records Destruction Certificate is a fielded Microsoft Word form that should be used by Records Officers to document destruction of records at an agency. A printed copy of the completed and signed form should be sent to the Public Records Division.

Fill in the data on the Records Destruction Certificate (form PRD 50) as follows:

- **Date**: Enter the month, day, year the Certificate is prepared.
- **Cabinet/Local Jurisdiction**: Enter your agency’s cabinet or local jurisdiction.
- **Department/Local Government Office**: Enter the name of department or local government office which falls under the entity listed above.
- **Division**: Name of division which falls under entity listed above.
- **Branch/Unit**: Name of branch or unit which falls under entity listed above.
- **Schedule Date**: The month and year the current Records Retention Schedule for your agency was approved by the State Archives and Records Commission. This information can be found on the signature page which accompanies the retention schedule or the top right-hand side of an individual schedule page.
- **Destruction Date**: Indicate the date the records were disposed of.
- **Destruction Method**: Indicate the method used to dispose of the records, i.e., landfill, trash, recycle, shred, etc. using the pull down menu.
- **Series No.**: Enter the series number from your agency’s Records Retention Schedule or applicable general schedules for the record(s) you are destroying. Multiple series can be recorded on the Destruction Certificate.
- **Title Records**: Enter the title of the record(s) exactly as shown in your agency’s Records Retention Schedule, or the General Schedule for State Agencies.
- **Date Span**: Give the inclusive (oldest and most recent) dates of the records destroyed.
- **Volume**: Indicate the amount of each series of records destroyed. This may be in cubic feet (if the records are in paper format), megabytes (if the records are in digital format), or some other unit of measure (for other formats). If the records are in other formats, click the box next to the empty field and complete that field.
- **Total Volume of Records Destroyed**: Enter the total volume of records destroyed.
- **Approvals and Certifications**: Agency Records Officer or records custodian signs and dates the form, certifying destruction of records.

Forward the original signed copy of the Records Destruction Certificate, plus one photocopy, to either the State Records Branch (if it is a state record) or the Local Records branch (if it is a local record) of the Public Records Division, 300 Coffee Tree Road, P.O. Box 537, Frankfort, Kentucky, 40602. Retain one paper or electronic copy for your agency’s files.
Records Destruction Certificate
Kentucky Department for Libraries and Archives, Public Records Division
300 Coffee Tree Road, P.O. Box 537, Frankfort Kentucky 40602

Date: 11-04-11

Cabinet/Local Jurisdiction: Beckham County, Kentucky
Department/Local Government Office: City of Dog Patch
Division:
Branch/Unit:
Schedule Date: 09-09-99  Destruction Date: 11-04-11  Destruction Method: Recycle

For records destroyed at agency only, per approved retention schedules

<table>
<thead>
<tr>
<th>Series No.</th>
<th>Title of Records</th>
<th>Date Span</th>
<th>Volume</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>L5011</td>
<td>Accounts Payable File</td>
<td>1985-2006</td>
<td>35.0</td>
</tr>
<tr>
<td>L4766</td>
<td>Monthly Billing Registers</td>
<td>1998-2008</td>
<td>20.0</td>
</tr>
<tr>
<td>L4768</td>
<td>Periodic Accounts Receivable Activity Reports</td>
<td>1998-2008</td>
<td>12.0</td>
</tr>
<tr>
<td>L5001</td>
<td>Banking Records Files</td>
<td>1980-2008</td>
<td>20.0</td>
</tr>
<tr>
<td>L6324</td>
<td>Construction Project Files</td>
<td>1987-1999</td>
<td>4.0</td>
</tr>
<tr>
<td>L5010</td>
<td>Grant Administration Files</td>
<td>1982-1993</td>
<td>5.0</td>
</tr>
<tr>
<td>L4966</td>
<td>Meeting Itineraries and Agendas</td>
<td>1984-1991</td>
<td>0.25</td>
</tr>
<tr>
<td>L4955</td>
<td>Routine Correspondence</td>
<td>1979-1991</td>
<td>3.0</td>
</tr>
<tr>
<td>L4956</td>
<td>Informational and Reference Material</td>
<td>1975-2005</td>
<td>10.0</td>
</tr>
<tr>
<td>L0971</td>
<td>Paid Property Tax Bills</td>
<td>1991-2005</td>
<td>4.0</td>
</tr>
<tr>
<td>L4749</td>
<td>Application for Business/Occupational Licenses</td>
<td>1991-2005</td>
<td>3.0</td>
</tr>
<tr>
<td>L5014</td>
<td>Contracts and Agreements File</td>
<td>1975-1995</td>
<td>1.0</td>
</tr>
<tr>
<td>L4763</td>
<td>Service Start-up</td>
<td>1988-2004</td>
<td>4.0</td>
</tr>
<tr>
<td>L5365</td>
<td>Service Work Orders</td>
<td>1981-2005</td>
<td>4.0</td>
</tr>
<tr>
<td>L4982</td>
<td>Building Permits</td>
<td>2002-2004</td>
<td>0.25</td>
</tr>
<tr>
<td>L4741</td>
<td>Parking Citationss -- Paid</td>
<td>1997-1998</td>
<td>0.1</td>
</tr>
<tr>
<td>L4940</td>
<td>Audio Recordings of Official Meetings</td>
<td>1981-1985</td>
<td>1.0</td>
</tr>
<tr>
<td>L4964</td>
<td>Insurance Policy File</td>
<td>1978-2004</td>
<td>2.0</td>
</tr>
<tr>
<td>L4992</td>
<td>Inventory File Asset/Equipment</td>
<td>1999-2004</td>
<td>3.0</td>
</tr>
<tr>
<td>L4764</td>
<td>Meter Reading Books</td>
<td>1999-2004</td>
<td>4.0</td>
</tr>
<tr>
<td>L5798</td>
<td>Payroll Registers -- Pay Period</td>
<td>1999-2004</td>
<td>4.0</td>
</tr>
</tbody>
</table>

Total Volume of Records Destroyed: 139.6

Approvals and Certifications

Before destroying records not listed on the agency’s retention schedule or applicable general schedules, approval must be obtained from the State Archives and Records Commission.

I hereby certify that the records described above have been destroyed.

Records Officer/Custodian: ___________________________ Date: ________________

PRD USE ONLY

□ D □ EM □ L □ S □ C □
ELECTRONIC RECORDS MANAGEMENT

Kris Justus
Electronic Records Analyst
Kentucky Department for Libraries & Archives (KDLA)

Electronic Records and Email Management
WHAT IS A PUBLIC RECORD?

KRS 171.410 defines a public record as:

“all books, papers, maps, photographs, cards, tapes, disks, diskettes, recordings and other documentary materials, regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency.”
Who is Responsible?

- It is everyone’s responsibility to manage public records.
- Generally assume if you created it, you are responsible for maintaining it in accordance with the retention schedule.
- Each agency has a designated Records Officer – if there is a question about a specific record, ask them first.
Retention Schedules are Format Neutral

- This means that no matter how the record is kept, it is considered the same record. The content determines what the record series is and its retention period.
- As long as non-permanent records are accessible and accurate, it is at the agency’s discretion whether they are kept in paper or electronic formats.

Maintain records in the format most appropriate for your agency’s needs. If records are accessed less, it’s okay to maintain them in paper format or store them offsite.
Permanent Records and Format

- Records with a temporary (non-permanent) retention may be retained electronically or in paper, regardless of how they originated.
- Permanent records that were originally created in paper must be maintained in an eye-readable format per KRS 171.450. If the permanent records are born digital, they may be maintained digitally.
Common Record Formats

“Eye Readable”
- Paper
- Physical Photos
- Microform

“Machine Readable”
- Email
- Digital Images
- Audio/Video
Benefits of Electronic Records

- Electronic records are more easily accessible.
- Well-organized records simplify open records requests.
- Secure digital storage and backups are good disaster prevention plans.
Concerns of Managing Electronic Records

- May have thousands of disorganized, unidentified files
- May seem impossible to apply retention periods to digital files
- Why not keep electronic records forever?
The Process

- Locate everything to be saved
- Decide what to keep
- Organize the files
- Maintain backups
- Follow retention schedule
Organize the Files

- How to organize files:
  - Your agency may decide on a standard filing system
  - It’s ideal to implement your retention schedule into your organization system, including retention periods
  - Some document management systems have retention options
Can be “stored and ignored” under optimized conditions with the expectation that you can go back and access them again at any time.

Cannot “store and ignore.” Why?

Dependent on hardware/software, which becomes obsolete over time.

Files stored on obsolete hardware or in obsolete formats are essentially “trapped.”
To prevent data becoming ‘trapped,’ it is important to plan media migrations and periodic upgrades into your records management programs.

This applies to proprietary software formats and records kept in electronic systems as well.
Disposition and Destruction

- When electronic records meet their retention, they should be destroyed – treat them as if they were paper records.
- Destruction of records must be suspended in case of litigation, pending litigation, or an ongoing open records dispute.
- Don’t keep electronic records forever just because they’re electronic! If you have a record, your agency is obligated to produce it, even if it has met its retention.

Don't Forget!
How to Manage Your Email
“What is email?”

Email messages:

- are public records (KRS 171.410)

- can be subject to open records requests (KRS 61.870-61.884)

- are discoverable in a lawsuit
Email Issues

- Commonly considered to be the riskiest form of business communication
- Most legal problems stem from personal use
- Incorrect assumption that email messages are private & not subject to open records requirements
- Encourages “conversational atmosphere” as opposed to more formal, business-like communication
- Record no longer a static document
- Disposal can be difficult
“So, how long do I keep email?”

What type of record is it?

- Email is a communications medium, not a class of records
- There are several types of records that can be sent via e-mail
- Each of these types of records have different retention periods based on retention schedules

Follow your Retention Schedule!
Email Types

Common types of e-mail records:

- **Official Correspondence**
  - Documenting agency policies and procedures
  - L4954 - Retain permanently

- **Routine Correspondence**
  - Non-policy in nature and not critical to the agency
  - L4955 - Retain up to 2 years

- **Non-Business Related Messages**
  - L5866 – Destroy immediately
Non-business related email

- **Personal Messages**
  - Needs to be a balance between use and abuse
  - Could create risk
    - Viruses
    - Legal liability
    - Embarrassment

- **Spam**
  - Problems
    - Volume
    - Offensive
    - Viruses

- **Unsolicited E-mail**
  - A type of spam
  - Unwanted e-mail that is not work related
    - Advertising from vendors
    - Non-work related e-mail from co-workers
      - Jokes
      - News articles
      - General (Not work related) Announcements
From the Guidelines for Managing Email in KY Government located on the KDLA website at: http://www.kdla.ky.gov
Deleting Email

Delete messages that are not needed!

- Transitory messages
- Informational and Reference material
- “Spam” and other non-business messages
Sample Filing Structure for E-mail

**INFORMATIONAL AND REFERENCE MATERIAL** – (Delete when no longer useful.)
- Drafts – Publications, Reports, Memos
- Listserv Messages

**TEMPORARY MESSAGES** – Delete per Retention Schedule
- Routine Correspondence (delete after 2 years)
  - Project 1
  - Project 2
  - Person A (Supervisor)
  - Person B (Co-worker)
- Activity Reports (delete after 2 years)
  - Year #
    - Jan, Feb, etc.

**PERMANENT MESSAGES** – (As defined by retention schedules* Check with agency records officer for appropriate filing procedures.)
- Official Correspondence (usually from agency or division head)
  - Project A
  - Project B
- Annual or Summary Reports
- Policies and Procedures
- Meeting Minutes
Reach out for help!

KDLA has many resources to help manage records in all formats. Don’t hesitate to contact KDLA with any questions or concerns about records management issues. We want to help!
Resources and Credits

- KDLA website:  [www.kdla.gov](http://www.kdla.gov)
- Retention schedules: [http://kdla.ky.gov/records/recretentionschedules/Pages/default.aspx](http://kdla.ky.gov/records/recretentionschedules/Pages/default.aspx)
- Understanding E-mail page:
  - Guidelines for Managing E-mail in KY Government
  - Internet and E-mail Acceptable Use Policy (CIO-060)
  - Model Policy and Procedure for the Management of Electronic Mail in Kentucky Agencies
  - Storage of E-mail Messages using Outlook
- Clip art from [thegraphicsfairy.com](http://thegraphicsfairy.com) and [openclipart.org](http://openclipart.org)
Any Questions or Comments?

Ask now! or

Please email Kris Justus at kris.justus@ky.gov or phone at 502-564-1708 or

Visit the KDLA website at http://kdla.ky.gov
Sample Filing Structure for Electronic Records

- **Accounts Payable** (F0143)
- **Activity Reports** (M0029 – delete after two years)
  - 2014 (can be destroyed)
  - 2015
  - 2016
- **Annual Reports** (M0022)
- **Finding Aids** (06064)
- **Grant Projects** (F0111)
  - Grant Project 1
  - Grant Project 2
- **Informational and Reference Material** (M0018)
  - Project August 2015
  - Project January 2016
  - Project May 2014 (project complete, can delete)
- **Policies and Procedures** (M0003)
- **Meeting Minutes** (M0008)
  - 2015
  - 2016
- **Record Desc and Analysis** (00639)
- **Special Studies and Reports** (M0042)

KDLA – contact Kris Justus at kris.justus@ky.gov or 502-564-1708
Maintaining Email: Who Is Responsible?

Because email messages can be forwarded and routed to multiple addresses, copies of the messages may exist in many areas of the agency. In most cases, the author, or originator, of the email message is responsible for maintaining the “record” copy. However, in cases in which the recipient has altered the message (made changes, added attachments, etc.) or when the message is coming from outside the agency (and therefore not documented anywhere within the agency), the recipient is the one responsible for retaining the message.

July 15, 2016 KDLA, based on a document from the Department of Workforce Investment
Sample Filing Structure for E-mail

**INFORMATIONAL AND REFERENCE MATERIAL** – (M0018) Delete when no longer useful.

- **Drafts** – Publications, Reports, Memos
- **Listserv Messages**

**TEMPORARY MESSAGES** – Delete per Retention Schedule

- **Routine Correspondence** (M0002 – delete after 2 years)
  - Project 1
  - Project 2
  - Person A (Supervisor)
  - Person B (Co-worker)

- **Activity Reports** (M0029 – delete after 2 years)
  - Year #
    - Jan, Feb, etc.

**PERMANENT MESSAGES** – (As defined by retention schedules* Check with agency records officer for appropriate filing procedures.)

- **Official Correspondence** (M0001 – usually from agency or division head)
  - Project A
  - Project B

- **Annual or Summary Reports** (M0022)
- **Policies and Procedures** (M0003)
- **Meeting Minutes** (M0008)