

CHAPTER 36: PUBLIC RECORDS

Section

General Provisions

36.01 Definitions

Procedures for Requesting Public Records

36.15 Initial request with immediate inspection

36.16 Referral to proper custodian

36.17 Public records not immediately available

36.18 Refusal of unreasonable requests

36.19 Time limitation; denial of inspection

36.20 Concealing or destroying records prohibited

36.21 Access to records relating to particular individual

36.22 Format of copies

36.23 Fees for copies

36.24 Misstatement of purpose prohibited

36.25 Online access to public records in electronic form

36.26 Public records protected from disclosure

36.27 Notification of the Attorney General

GENERAL PROVISIONS

§ 36.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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. **COMMERCIAL PURPOSE** shall not include:

- (1) Publication or related use of a public record by a newspaper or periodical;

(2) Use of a public record by a radio or television station in its news or other informational programs; or

(3) Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to the action, or the attorneys representing the parties.
(KRS 61.870(4))

COUNTY. The government of this county.

CUSTODIAN.

(1) The official custodian or any authorized person having personal custody and control of public records.
(KRS 61.870(6))

(2) The **CUSTODIAN** having personal custody of most of the public records of this county is the County Clerk.

MECHANICAL PROCESSING. Any operation or other procedure which is transacted on a machine, and which may include, but is not limited to a copier, computer, recorder or tape processor, or other automated device.
(KRS 61.870(8))

MEDIA. The physical material in or on which records may be stored or represented, and which may include but is not limited to paper, microform, disks, diskettes, optical disks, magnetic tapes, and cards.
(KRS 61.870(7))

OFFICIAL CUSTODIAN.

(1) The chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care, and keeping of public records, regardless of whether the records are in his or her actual personal custody and control.
(KRS 61.870(5))

(2) The **OFFICIAL CUSTODIAN** of this county shall be the County Judge/Executive.

PERSON. A human being who makes a request for inspection of public records.

PRESCRIBED FEE or FEE. The fair payment required by the county for making copies of public records and for mailing public records, which shall not exceed the actual cost thereof and shall not include the cost of required staff time.

PUBLIC AGENCY.

- (1) Every state or local government officer;
 - (2) Every state or local government department, division, bureau, board, commission, and authority;
 - (3) Every state or local legislative board, commission, committee, and officer;
 - (4) Every county governing body, council, school district board, special district board, and municipal corporation;
 - (5) Every state or local court or judicial agency;
 - (6) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;
 - (7) Any body created by state or local authority in any branch of government;
 - (8) Any body which, within any fiscal year, derives at least 25% of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds. However, any funds derived from a state or local authority in compensation for goods or services that are provided by a contract obtained through a competitive procurement process shall not be included in the determination of whether a body is a public agency under this division (8);
 - (9) Any entity where the majority of its governing body is appointed by a public agency as defined in this division; by a member or employee of the public agency; or by any combination thereof;
 - (10) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in this division; and
 - (11) Any interagency body of two or more public agencies where each public agency is defined in this division.
- (KRS 61.870(1))

PUBLIC RECORD. All books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by the public agency. **PUBLIC RECORD** shall not include any records owned or maintained by or for a body discussed in division (8) of the definition of **PUBLIC AGENCY**, above that are not related to functions, activities, programs, or operations funded by state or local authority.

(KRS 61.870(2))

REQUEST. An oral or written application by any person to inspect public records of the agency.

SOFTWARE. The program code which makes a computer system function, but does not include that portion of the program code which contains public records exempted from inspection as provided by KRS 61.878 or specific addresses of files, passwords, access codes, user identifications, or any other mechanism for controlling the security or restricting access to public records in the public agency's computer system. **SOFTWARE** consists of the operating system, application programs, procedures, routines, and subroutines such as translators and utility programs, but does not include that material which is prohibited from disclosure or copying by a license agreement between a public agency and an outside entity which supplied the material to the agency.
(KRS 61.870(3))

PROCEDURES FOR REQUESTING PUBLIC RECORDS

§ 36.15 INITIAL REQUEST WITH IMMEDIATE INSPECTION.

(A) Any person desiring to inspect or copy the public records of this county shall make a request for inspection at the office of the County Clerk during regular office hours, except during legal holidays. The official custodian, or the custodian acting under the authority of the official custodian, may require a request to inspect public records to be in writing, signed by the applicant and with the applicant's name printed legibly on the application. A written request to inspect public records may be presented by hand delivery, mail or via facsimile, if one is available.

(B) If the custodian determines that a person's request is in compliance with this chapter and the open records law, and the requested public records are immediately available, the custodian shall deliver the records for inspection. A person may inspect public records at the designated office of the county during the regular office hours, or in appropriate cases, by receiving copies of the records through the mail.

(C) If the public records are to be inspected at the offices of the county, suitable facilities shall be made available in the office of the County Clerk or in another office of the county as determined by the official custodian or custodian for the inspection. No person shall remove original copies of public records from the offices of the county without the written permission of the official custodian of the record. When public records are inspected at the county offices, the person inspecting the records shall have the right to make abstracts and memoranda of the public records and to obtain copies of all written public records. When copies are requested, the custodian may require advance payment of the prescribed fee.

(D) Upon proper request, the county shall mail copies of the public records to a person whose residence or principal place of business is located outside of the county after the person precisely

describes the public records which are readily available and after the person pays in advance the prescribed fee.

Statutory reference:

Right to inspection, limitations, see KRS 61.872(1) - (3)

§ 36.16 REFERRAL TO PROPER CUSTODIAN.

If the County Clerk does not have custody or control of the public record or records requested, the County Clerk shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records.

(KRS 61.872(4))

§ 36.17 PUBLIC RECORDS NOT IMMEDIATELY AVAILABLE.

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

Statutory reference:

Similar provisions, see KRS 61.872(5)

§ 36.18 REFUSAL OF UNREASONABLE REQUESTS.

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 must be sustained by clear and convincing evidence.

(KRS 61.872(6))

§ 36.19 TIME LIMITATION; DENIAL OF INSPECTION.

Each public agency, upon any request for records made under this chapter, shall determine within five days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any request whether to comply with the request and shall notify in writing the person making the request within the five-day period of its decision. Any agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his or her authority and shall constitute final agency action.

(KRS 61.880(1))

§ 36.20 CONCEALING OR DESTROYING RECORDS PROHIBITED.

No official of the county shall willfully conceal or destroy any record with the intent to violate the provisions of this chapter or these rules and regulations.

§ 36.21 ACCESS TO RECORDS RELATING TO PARTICULAR INDIVIDUAL.

Any person shall have access to any public record relating to him or her or in which he or she is mentioned by name, upon presentation of appropriate identification, subject to the provisions of § 36.26.

(KRS 61.884)

§ 36.22 FORMAT OF COPIES.

(A) Upon inspection, the applicant shall have the right to make abstracts of the public records and memoranda thereof, and to obtain copies of all public records not exempted by the terms of § 36.26. When copies are requested, the custodian may require a written request and advance payment of the prescribed fee, including postage where appropriate. If the applicant desires copies of public records other than written records, the custodian of the records shall duplicate the records or permit the applicant to duplicate the records; however, the custodian shall ensure that the duplication will not damage or alter the original records.

(KRS 61.874(1))

(B) (1) Nonexempt public records used for noncommercial purposes shall be available for copying in either standard electronic or standard hard copy format, as designated by the party requesting the records, where the agency currently maintains the records in electronic format. Nonexempt public records used for noncommercial purposes shall be copied in standard hard copy format where agencies currently maintain records in hard copy format. Agencies are not required to convert hard copy format records to electronic formats.

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

(KRS 61.874(2))

§ 36.23 FEES FOR COPIES.

(A) *Noncommercial purposes.* The public agency may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required. If a public agency is asked to produce a record in a nonstandardized format, or to tailor the format to meet the request of an individual or a group, the public agency may at its discretion provide the requested format and recover staff costs as well as any actual costs incurred.

(KRS 61.874(3))

(B) *Commercial purposes.*

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

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

(3) The fee provided for in division (B)(1) of this section may be based on one or both of the following:

(a) Cost to the public agency of media, mechanical processing, and staff required to produce a copy of the public record or records; and

(b) Cost to the public agency of the creation, purchase, or other acquisition of the public records.

(KRS 61.874(4))

Cross-reference:

Fees for online access to public records, see § 36.25

§ 36.24 MISSTATEMENT OF PURPOSE PROHIBITED.

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

(A) Commercial purpose, without stating the commercial purpose, if a certified statement from the requestor was required by the public agency pursuant to § 36.23(B)(2);

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

(C) Noncommercial purpose, if the person uses or knowingly allows the use of the public record for a commercial purpose. A newspaper, periodical, radio or television station shall not be held to have used or knowingly allowed the use of the public record for a commercial purpose merely because of its publication or broadcast, unless it has also given its express permission for that commercial use.
(KRS 61.874(5)) Penalty, see § 10.99

§ 36.25 ONLINE ACCESS TO PUBLIC RECORDS IN ELECTRONIC FORM.

(A) Online access to public records in electronic form may be provided and made available at the discretion of the public agency. If a party wishes to access public records by electronic means and the public agency agrees to provide online access, a public agency may require that the party enter into a contract, license, or other agreement with the agency, and may charge fees for these agreements.

(B) Fees shall not exceed:

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

(2) If the records are requested for a commercial purpose, a reasonable fee based on the factors set forth in § 36.23(B).
(KRS 61.874(6))

§ 36.26 PUBLIC RECORDS PROTECTED FROM DISCLOSURE.

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

(1) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(2) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the disclosure or publication of which is directed by other statute;

(3) (a) Records confidentially disclosed to an agency, or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;

(b) Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:

1. In conjunction with an application for or the administration of a loan or a grant;
2. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;
3. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or
4. For the grant or review of a license to do business.

(c) The exemptions provided for in divisions (A)(3)(a) and (b) above shall not apply to records the disclosure or publication of which is directed by statute;

(4) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within, or expanding within the Commonwealth. This exemption shall not include those records pertaining to applications to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in division (A)(3) above;

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

(6) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;

(7) 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;

(8) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of this chapter, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys

or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of this chapter and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this division (A)(8) shall not be used by the custodian of the records to delay or impede the exercise of rights granted by this chapter;

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

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

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

(12) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly, including any information acquired by the Department of Revenue in tax administration that is prohibited from divulgence or disclosure under KRS 131.190;

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

1. Criticality lists resulting from consequence assessments.
2. Vulnerability assessments;
3. Antiterrorism protective measures and plans;
4. Counterterrorism measures and plans;
5. Security and response needs assessments;

6. Infrastructure records that expose a vulnerability referred to in this division (A)(13) through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage and gas systems.

7. The following records when their disclosure will expose a vulnerability referred to in this division (A)(13): detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility or security systems of any building or facility owned, occupied, leased or maintained by a public agency; and

8. Records when their disclosure will expose a vulnerability referred to in this division (A)(13) and that describe the exact physical location of hazardous chemical, radiological, or biological materials.

(b) As used in this division (A)(13), *TERRORIST ACT* means a criminal act intended to:

1. Intimidate or coerce a public agency or all or part of the civilian population;
2. Disrupt a system identified in division (A)(13)(a)6.; or
3. Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.

(c) On the same day that a public agency denies a request to inspect a public record for a reason identified in this division (A)(13), that public agency shall forward a copy of the written denial of the request, referred to in KRS 61.880(1), to the Executive Director of the Kentucky Office of Homeland Security and the Attorney General;

(d) Nothing in this division (A)(13) shall affect the obligations of a public agency with respect to disclosure and availability of public records under state environmental, health, and safety programs;

(e) The exemption established in this division (A)(13) shall not apply when a member of the Kentucky General Assembly seeks to inspect a public record identified in this division (A)(13) under the Open Records Law;

(14) Public or private records, including books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, having historic, literary, artistic, or commemorative value accepted by the archivist of a public university, museum, or government depository from a donor or depositor other than a public agency. This exemption shall apply to the extent that nondisclosure is requested in writing by the donor or depositor of such records, but shall not apply to records the disclosure or publication of which is mandated by another statute or by federal law;

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

(a) A contract is awarded; or

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

(16) Client and case files maintained by the Department of Public Advocacy or any person or entity contracting with the Department of Public Advocacy for the provision of legal representation under KRS Chapter 31;

(17) Communications of a purely personal nature unrelated to any governmental function; and

(18) Except as provided in KRS 61.168, photographs or videos that depict the death, killing, rape, or sexual assault of a person. However, such photographs or videos shall be made available by the public agency to the requesting party for viewing on the premises of the public agency, or a mutually agreed upon location, at the request of;

(a) 1. Any victim depicted in the photographs or videos, his or her immediate family, or legal representative;

2. Any involved insurance company or its representative; or

3. The legal representative of any involved party;

(b) Any state agency or political subdivision investigating official misconduct; or

(c) A legal representative for a person under investigation for, charged with, pled guilty to, or found guilty of a crime related to the underlying incident. The person under investigation for, charged with, pled guilty to, or found guilty of a crime related to the underlying incident or their immediate family shall not be permitted to have access to the photographs or videos.
(KRS 61.878(1))

(B) No exemption under this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.
(KRS 61.878(2))

(C) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.
(KRS 61.878(5))

(D) No exemption under this section shall be construed to deny, abridge, or impede the right of a municipal employee, an applicant for employment, or an eligible on a register to inspect and copy any record, including preliminary and other supporting documentation, that relates to him or her. These records shall include but not be limited to work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, layoffs, disciplinary actions, examination scores, and preliminary and other supporting documentation. A county employee, applicant, or eligible shall not have the right to inspect or copy any examination or any documents relating to ongoing criminal or administrative investigations by any agency.
(KRS 61.878(3))

(E) In addition, if any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination, subject to the possible applicability of § 36.18.

(KRS 61.878(4))

§ 36.27 NOTIFICATION OF THE ATTORNEY GENERAL.

The official custodian shall notify the Attorney General of any actions filed against the county in circuit court regarding the enforcement of the Open Records Law, KRS 61.870 to 61.884.

