



**County Employees Retirement System
Board of Trustees – Trustee Education Session
January 17, 2024, at 2:00 pm ET (1:00 pm CT)
Live Video Conference/Facebook Live**

AGENDA

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|---|--------------------------|
| 1. Call to Order | Betty Pendergrass |
| 2. Opening Statement | Eric Branco |
| 3. Roll Call | Sherry Rankin |
| 4. Public Comment | Sherry Rankin |
| 5. Open Meetings and Open Records Training | Eric Branco |
| 6. Adjourn | Betty Pendergrass |

CERS Open Records and Open Meetings Act Training

Eric Branco, General Counsel, County Employees Retirement
Systems

What is The Open Meetings Act?

- Enacted in 1974. The Open Meetings Act is contained in KRS 61.800 - 61.850.
- “[T]he basic policy of [the Open Meetings Act] is that the formation of public policy is public business and shall not be conducted in secret[.]” – KRS 61.800
- “[E]xceptions provided for by [the Act] or otherwise provided for by law shall be strictly construed.” – KRS 61.800

What are the basic requirements of the Act?

- “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[.]” – KRS 61.810(1)(emphasis added).
- This is the core of the act.
- Definitions for many of these terms are in KRS 61.805.
- Further explanations of these definitions can be found in case law, Open Meeting opinions from the Office of the Attorney General, and the Attorney General’s Open Records and Open Meetings Act Guide.

What is a meeting?

- “[A]ll gatherings of every kind, including video teleconferences, 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[.]” – KRS 61.805(1)
- Incorporating this definition into KRS 61.810(1):
 - “All ‘gatherings of every kind, including video teleconferences, 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[,]’ of a quorum of the members of a 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[.]”

What is a public agency?

- A public agency is:
 - Every state or local government board, commission, and authority.
 - Every state or local legislative board, commission, and committee.
 - Every state or local government agency . . . created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act.
 - Any body created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act in the legislative or executive branch of government.
 - Any entity when the majority of its governing body is appointed by a “public agency,” a member or employee of a “public agency,” a state or local officer, or any combination thereof.
 - Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for . . . a committee formed for the purpose of evaluating the qualifications of public agency employees, established, created, and controlled by a “public agency.”
 - Any interagency body of two or more public agencies where each is a “public agency.”
- KRS 61.805(2)
- The Open Meetings Act definition of “public agency” is narrower than the Open Records Act’s definition. They are not interchangeable.

What is a public agency?

- Boards, commissions, committees, subcommittees, ad hoc committees, advisory committees, councils, or agencies, established, created, and controlled by a public agency.
 - “Control” has is not defined in the statute, nor has the Attorney General explicitly defined it. However, several Open Meetings opinions are helpful.
 - The Attorney General states that if an agency defines the duties of a sub-entity through policy, the sub-entity is a public agency. (10-OMD-149)
 - Additionally, an agency defining the composition of a sub-entity, the times it can convene, and how its members are selected also suggest that it is controlled by the agency. (18-OMD-125)

What is a public agency?

- Entities with a majority of their governing body appointed by the agency, a member or employee of the agency, a state or local officer, or any combination thereof.
 - This section covers entities that aren't created by the agency but have a majority of their members appointed by the agency or agency employees.
 - This has been interpreted to cover certain “work groups” and other similar bodies.
 - Generally, the more control or authority the public agency exerts over or delegates to the entity, the greater the likelihood that the entity would be considered a public agency. (13-OMD-037)
 - Additionally, the more formality an entity observes, the more likely it will be considered a public agency. (95-OMD-71)

What is a public agency?

- The Attorney General has recognized that the Open Meetings Act is “intended to provide public access to meetings of decision-making bodies, and it is not intended to provide public access to the day-to-day administrative work of a public agency.” (13-OMD-187)
- “If the work being done by [the entity] is too remote from the decision making process, the Open Meetings Act is not implicated.” (13-OMD-176)
- The more decision-making responsibility an entity has, the more likely it will be considered a public agency.
- Conversely, the more purely administrative entities are likely *not* public agencies.

Who are members of a public agency?

- A member of a public agency is a member of the governing body of the public agency.
- It does not include employees or licensees of the agency.

What is “public business?”

- Not defined in the statute.
- *Yeoman v. Commonwealth of Kentucky, Health Policy Board*, 983 S.W.2d 459, 474 (Ky. 1998) defined “public business” as “the discussion of the various alternatives to a given issue about which the board has the option to take action.”
- 12-OMD-140 stated that the following would be considered “public business:
 - The expenditure of public funds.
 - The scope or type of services offered by a public agency.
 - Regulations, policies, and procedure that affect the manner in which the public agency provides services to the public or complies with its statutory duties.
 - Personnel matters affecting the compensation, benefits, or duties of public employees.
- *Yeoman* also made clear however that “public business is not simply any discussion between two officials of the agency.

What does it mean to take “action” on public business?

- “Action taken” means “a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body.” – KRS 61.805(3)
- This can also be an expression that no action will be taken on an issue. (23-OMD-078)
- Actions taken must be reflected in the minutes of the meeting.
- **Remember:** The Open Meetings Act can be triggered by both the *discussion* of public business *or* taking action on public business.

What constitutes a quorum of a public agency?

- A quorum of the CERS Board of Trustees is a “majority of the trustees.” – KRS 78.782
- Quorums for CERS Committees are set by the CERS Bylaws.
- The attendance of a quorum of the full board at a committee meeting does not trigger the Open Meetings Act. (12-OMD-194)
- However, board members cannot use committee meetings “as a subterfuge to evade the requirements of the Act.” (19-OMD-215)
- Board members cannot use a series of less than quorum meetings to avoid the requirement of having an open meeting. – KRS 61.810(2)
- However, board members can have individual discussions when the purpose is to educate members on specific issues.

When can an agency *not* have an open meeting?

- There are only two exceptions to the requirement to hold open meetings:
- When the requirements for an open meeting aren't met.
 - For example, a quorum of members can meet socially so long as they do not discuss or take action on public business. If they do, that meeting is required to be an open meeting.
 - Less than a quorum of board members can meet and discuss public business, so long as they aren't holding a series of less than quorum meetings intending to subvert the requirement for open meetings.
 - These situations don't require closed sessions because the Open Meetings Act doesn't apply. However, board members should be careful because the Open Meetings Act is strictly construed in favor of open meetings.
 - Care should be taken that quorums of *committees* are not present.
- When a statutory exception applies.

Statutory Exceptions to the Open Meetings Act

- There are fourteen exceptions to the requirement for open meetings contained in KRS 61.810.
- Most relevant to CERS are:
 - Discussion of proposed or pending litigation against or on behalf of the public agency.
 - Courts have held that this means “matters inherent to litigation, such as preparation, strategy, or tactics, but not just when an attorney is present.” *Floyd County Bd. of Educ. V. Ratliff*, 955 S.W.2d 921, 924 (Ky. 1997)
 - Discussions or hearings which might lead to the appointment, discipline, or dismissal of an individual employee or member.
 - This explicitly excludes the discussion of general personnel matters in secret.
- Discussions which fall into statutory exceptions are required to be held in closed session.
- Remember: All exceptions to the requirement for open meetings are strictly construed. – KRS 61.800.

Requirements for Closed Sessions

- Notice must be given in regular open meeting of:
 - The general nature of the business to be discussed in closed session.
 - The reason for the closed session, and
 - The specific provision of KRS 61.810 authorizing the closed session.
- A motion must be made in open session to go to closed session, and that motion must be carried.
- No final action can be taken in closed session.
 - This includes a decision that no final action will be taken on a matter.
- No matters may be discussed in closed session other than those publicly announced prior to convening in closed session.

Regular vs. Special Meetings

- Regular meetings are meetings which are held according to a schedule provided by the agency to the public.
 - An agency can provide a meeting schedule by ordinance, order, resolution, bylaw, or whatever other means may be required for the conduct of business of the agency. – KRS 61.820(2)
 - Regular meetings must be held at specific times and places which are convenient to the public.
 - Agencies must make sure the location of the public meeting has appropriate space, seating, and acoustics.

Regular vs. Special Meetings

- Boards may call special meetings at any time, provided that:
 - The presiding officer or a majority of the members of the agency agree to call a special meeting.
 - The agency provides a written notice of the date, time and place of the special meeting and agenda.
 - Discussion and action are limited to items on the agenda.
 - The notice is personally delivered, mailed, or faxed to every member of the public agency as well as media organizations who have filed written requests to receive notice of special meetings, and is calculated to be *received* at least twenty-four hours before the meeting.
 - Agency members and media can elect to receive these notices by e-mail.
 - Notice is conspicuously posted in the building where the special meeting will take place as well as in the building which houses the agency's headquarters twenty-four hours before the meeting is to take place.

Emergency Meetings

- Emergency meetings can be called only when there is an emergency that would prevent compliance with the notice requirements related to special meetings.
- The presiding officer or a majority of the members must still call the meeting and the agency must make a reasonable effort, under the circumstances, to notify members of the agency, the media, and the public of the meeting.
- At the beginning of the emergency meeting, the person chairing the meeting must describe the emergency circumstances present preventing compliance with the notice requirement and these comments must be recorded in the minutes.
- Discussion and action is limited to the *emergency* for which the meeting is called.

Emergency Meetings

- The Attorney General has provided some guidance on emergency meetings.
 - The Marshall County Fiscal Court violated the Open Meetings Act when it failed to *attempt* to give notice of an emergency meeting held in response to the devastating December 2021 tornados in the county. (22-OMD-017)
 - The Bath County Fiscal Court gave a sufficient justification for its emergency meeting concerning the passage of a budget ordinance. Failure to pass the budget ordinance would have meant the cessation of all vital services in Bath County. (06-OMD-156)
 - This was notwithstanding that fact the Attorney General recognized that the failure to pass such an ordinance was due to the negligence of the Fiscal Court itself.
 - No emergency existed when the Pewee Valley City Council held an emergency meeting to discuss the site of a proposed cell tower and the alleged “civil unrest” generated from the tower’s proposed location. (02-OMD-91)
 - No emergency existed when Somerset Community College held a meeting to discuss changing the name of the college. (00-OMD-80)

Video Teleconferencing

- Agencies can conduct any meeting through video teleconference provided that:
 - Notice is given the same as a regular or special meeting.
 - It is clearly stated that the meeting will be by video.
 - The public and media organizations are given specific information on how they may view the meeting electronically.
 - A primary physical location where the public may attend is identified *but only if*:
 - The agency has elected to provide a physical location, *or*
 - Two or more members of the agency are attending the video teleconference meeting from the same physical location.
 - The same procedures concerning participation, distribution of materials, and other matters apply in all video teleconference locations.
 - Members of the agency remain on camera at all times business is being discussed.
 - The meeting is suspended if there is any interruption in the video or audio of the broadcast.

Public Attendance

- Agencies cannot place any conditions on attendance other than those required to maintain order.
- Agencies cannot require members of the public to identify themselves as a condition of attendance.
- Agencies must provide meeting room conditions, including adequate space, seating, and acoustics, which allow effective public *observation* of the meeting.
 - The Act does not require that meetings be held at the *most* convenient locations at the *most* convenient times, but only that the meeting not be conducted in secret. (04-OMD-145)
- Agencies must allow media coverage, including recording and broadcasting.
- While the Open Meetings Act requires that the public be allowed to *attend* meetings, the public has no right to public comment at the meeting. (95-OMD-99)



Minutes

- Minutes must be taken at all meetings of a public agency.
- The minutes must contain an accurate record of the votes and actions at the meeting.
- Minutes must be open to public inspection no later than immediately following the next meeting of the body.
- Calling a meeting to order and adjourning the meeting are actions and must be recorded in the minutes.
- Agencies do not need to take minutes in closed session.



Enforcement

- Enforcement of the Open Meetings Act can be through an administrative process (KRS 61.846), a judicial process (KRS 61.848), or a combination of both.

Administrative Enforcement

- A person may submit a written complaint to the presiding officer of the agency detailing the circumstances of a suspected violation and the person's proposed remedy for the violation.
- The agency then has three days after receiving the complaint, excluding weekends and holidays, to decide whether to accept the proposed remedy and write a response to the person making the complaint.
- If the agency does not decide to adopt the proposed remedy, it must inform the person of the specific statutes which support its denial and a brief explanation of how those statutes apply.
- The response must be issued by the presiding officer, under their authority, and the response constitutes final agency action.
- The person then has sixty days to obtain a review of the agency's decision by the Attorney General. The Attorney General then has ten days to issue a written response. The Attorney General may request additional documentation from the agency.
- Either party may appeal the Attorney General's decision within thirty days. If there is no appeal, the Attorney General's opinion becomes law and can be enforced in the Circuit Court of the county in which the agency has its principal place of business or where the violation occurred.
- The Attorney General does not have the power to void agency actions which it finds to have violated the Open Meetings Act.

Judicial Enforcement

- A party may file suit in the Circuit Court where the agency has its principal place of business or in which the alleged violation occurred.
- The person complaining of a violation does not have to exhaust their administrative remedies before filing suit but does need to file a complaint with the agency prior to filing.
- The Circuit Court must give scheduling preference to the matter over all other causes and assign it for trial as soon as possible.
- Any rule, resolution, regulation, ordinance, or other formal action of a public agency without substantial compliance with the requirements related to open meetings, closed sessions, notice, or special meetings can be voided by the court.
- Anyone who prevails in an Open Meetings Act challenge against an agency where the violation is found to be willful, can be awarded costs and attorneys' fees. They can also be awarded up to \$100.00 per violation. These are all paid by the agency.
- There is no statute of limitations for violations.

Open Records Act

- First passed in 1976, the policy of the Open Records Act is “that free and open examination of public records is in the public interest and the exceptions provided [by the Act] or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.” – KRS 61.871

What are public records?

- The Open Records Act provides an expansive definition for “public records.”
 - 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 a public agency. – KRS 61.870(2)
 - The definition of “public records” include records that are exempt from inspection under the Open Records Act.
 - “Public records” include records maintained by an agent of the agency. Just because a record is not maintained on the agency’s premises does not mean it isn’t a public record of the agency.
 - Emails and text messages that concern public business which are stored on personal cell phones, email accounts, or computers are “public records.” See – *Kentucky Open Government Coalition, Inc. v. Kentucky Department of Fish and Wildlife Resources Commission*, 2023 WL 7095744.

Who can request to inspect public records?

- “All public records shall be open for **inspection** by any **resident of the Commonwealth**, except as otherwise provided by [exceptions to the Open Records Act], and **suitable facilities** shall be made available by each public agency for the exercise of this right. – KRS 61.872(1)(cleaned up and emphasis added).
- A resident of the Commonwealth is:
 - A person who lives in Kentucky.
 - A domestic business with a location in Kentucky.
 - A foreign business entity registered with the Secretary of State.
 - A person who is employed and works at locations within Kentucky.
 - A person or business who owns real property in Kentucky.
 - An agent of any person or business described above.
 - A news-gathering organization defined in KRS 189.635(8)(b)
 - Generally will include: newspapers, general interest or news magazines, TV stations, radio stations, news websites.

How must someone request a public record?

- Requests to inspect public records must be made to the public agency's official custodian of records.
- The "official custodian" is "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 such records are in his actual personal custody and control." – KRS 61.870(5)
- If a person sends a request to someone who does not have custody or control of the public record requested, that person *must* notify the requester and give the name and location of the official custodian of the requested agency's records.

How must someone request a public record?

- The Attorney General has promulgated a “Request to Inspect Public Records” form which *must* be accepted by any public agency. – KRS 61.876(4) and (5), 40 KAR 1:040.
- *However*, requesters do not have to use this form; so long as the request complies with the requirements of KRS 61.872(2):
 - *If the official custodian requires it*, a valid application must:
 - Be in writing.
 - Be signed by the applicant (either physically or electronically.)
 - Contain the applicants, legible, printed name.
 - Describe the records to be inspected.
 - The official custodian may also require a requester, other than a news-gathering organization, provide a written statement describing how they are a Kentucky resident.

How must someone request a public record?

- The application must be either:
 - Hand delivered.
 - Mailed.
 - Faxed.
 - Sent by email to the official custodian or their designee as adopted by their rules and regulations.
- Agencies cannot require the use of any particular form beyond the requirements of KRS 61.872(2) for open records requests.

How does an agency have to respond to an open records request?

- The public agency must determine whether it will comply with a request within five days of receiving it, excluding weekends and legal holidays.
- The agency must then notify the requester, in writing, of its decision.
- If the agency denies the request, in whole or in part, it must state the specific exception authorizing the denial and a brief explanation on how it applies to the record withheld.
- The written response must be issued by the official custodian or someone under his authority and constitutes final agency action.

How methods can a person use to inspect public records?

- A person can inspect public records of an agency in two ways:
 - In person during the regular office hours of the public agency; or
 - By receiving copies of the public records through the mail.

KRS 61.872(3)
- If a public record is in active use, in storage, or not otherwise available, the official custodian is required to immediately notify the requester and provide a place, time, and date for inspection of the records within five days of receipt of the application.
 - The official custodian must give a *detailed* explanation of the cause for the further delay beyond the five days, including the place, time, and earliest date on which the record will be available for inspection. – KRS 61.872(5)

Inspections of Public Records in Person

- An agency must provide “suitable facilities” for the inspection of public records.
- “Suitable facilities” not only refer to the physical location of the records, but can include:
 - Providing suitable equipment in which to access the records, such as a computer, film reader, tape player, etc. (OAG 90-50)
 - Providing copies of a records in a suitable format, such as in an electronic format accessible to the requester or paper copies. (93-ORD-46)
 - Providing a space to view records that is free from verbal abuse. (93-ORD-39)
- A public agency *must* allow for physical inspection of public records, on-site, during its regular office hours. (21-ORD-210)
 - It must allow this even if it would prefer to deliver the records by mail.
 - The agency cannot charge a fee prior to allowing a person to inspect records on site. (07-ORD-13)

Inspection of Public Records by Mail

- An agency *may* agree to answer any open record request by mail, but it cannot require a requester to accept records by mail.
- A requester who lives *and* works in the same county where the public records are located *may* be required to inspect the records in person prior to receiving copies. (01-ORD-75)
- An agency is *required* to mail, if requested, records to a person who either lives *or* works outside of the county in which the public records are located if:
 - The requester **precisely describes** the public records which are **readily available** within the public agency; and
 - The requester has paid all fees and the costs of mailing.

Inspection of Public Records by Mail

- “Precisely described” has been interpreted to mean something described in “definite, specific and unequivocal terms.” (11-ORD-007)
 - Requesters are only required to particularly describe public records when they are requesting them by mail. Requesters who want to view the records in person are only required to generally describe the records. (99-ORD-63)
 - “If a requester cannot describe the documents he wishes to inspect with sufficient specificity there is no requirement that the public agency conduct a search for such material.” (13-ORD-077)
 - “Open-ended any-and-all-records-that-relate type of request[s]” are generally not sufficient. (08-ORD-058)
 - “A request for any and all records which contain a name, a term, or a phrase is not a properly framed open records request, and generally need not be honored.” (99-ORD-14)

Inspection of Public Records by Mail

- Documents are not “readily available” if they are “widely dispersed or otherwise difficult to access.” (01-OAG-225)
- This requirement recognizes that “public agencies and employees are the servants of the people . . . ,but they are the servants of all the people and not only of persons who may make extreme and unreasonable demands on their time.” (99-ORD-63)
- Records that are not “precisely described” are not “readily available.” (11-ORD-007)
- An agency is not required to perform research in order to comply with a request. (16-ORD-242)
- When the requested records are not particularly described or readily available, the agency complies with the Open Records Act by making the records available to inspect during normal office hours. (99-ORD-63)

When can an agency exempt a record from inspection?

- There are numerous exemptions which allow an agency to withhold certain records.
- These exemptions are strictly construed, even if the record disclosed would cause inconvenience or embarrassment to public officials or others.
- Excluded public records can only be examined upon an order from a court of competent jurisdiction. – KRS 61.878(1)
 - Courts cannot authorize the disclosure of records related to civil litigation beyond what would be authorized by the Rules of Civil Procedure concerning discovery.
 - The court of competent jurisdiction is the Circuit Court of the county where the agency has its principal place of business or the county where the public record is located. – KRS 61.882(1)

When can an agency exempt a record from inspection?

- “Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” – KRS 61.878(1)(a)
 - Courts first determine if the record or information is of a personal nature, then, they decide whether the privacy interests of the persons involved outweigh the public’s interest in disclosure. *See Cape Publications, Inc. v. University of Louisville Foundation, Inc.*, 260 S.W.3d 818 (Ky. 2008)
 - Turns on whether the public has little to no legitimate interest in a matter that would likely cause serious personal embarrassment or humiliation. *Id.*

When can an agency exempt a record from inspection?

- “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 advantage to competitors of the entity that disclosed the records.” – KRS 61.878(1)(c)(1)
 - This has been held to include investment strategies of private contracting firms. (16-ORD-273)

When can an agency exempt a record from inspection?

- “Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency.” – KRS 61.878(1)(i).
- “Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended.” – KRS 61.878(1)(j).
 - This covers drafts of minutes, drafts of reports, and “notes” such as interoffice emails and chat messages. (23-ORD-024)
 - While the final product from the preliminary materials is not exempt under these sections, the preliminary material remains exempt.
 - The idea behind this exception is that there should be “full and frank discussions between and among public employees and officials as they hammer out official action.” (14-ORD-014) (cleaned up).

When can an agency exempt a record from inspection?

- “All public records or information the disclosure of which is prohibited by federal law or regulation or state law.” – KRS 61.878(1)(k).
 - CERS is prevented by state law from disclosing information that would compromise the system’s ability to competitively invest in real estate or other asset classes. – KRS 78.782(19)
- “Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly[.]” – KRS 61.878(1)(l).
 - This would include attorney-client privilege under KRE 503.

When can an agency exempt a record from inspection?

- When an agency exempts a public record, it must examine the document and separate the excepted and nonexcepted information and make the nonexcepted information available for examination. – KRS 61.878(3).
- An agency may refuse unreasonably burdensome requests or repeated requests that the custodian believes are intended to disrupt other essential functions of the public agency. – KRS 61.872(6).
 - The agency must prove the refusal by clear and convincing evidence.

Rules Related to Duplication and Fees

- A person has a right to make abstracts or memoranda concerning public records they are inspecting. – KRS 61.874(1).
- Persons also have the right to obtain copies of all nonexempt public records, including copies of non-written records, provided that the originals are not altered or damaged.
- The custodian may require a written request for copies and may require the requester to pay an advanced fee for copies and postage.
- The fees an agency can charge for public records largely depends on whether they are used for a commercial purpose.
- “Commercial purpose” means “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.” – KRS 61.870(4)(a)
 - Commercial purpose does not include: publication or use in a newspaper, periodical, TV/radio news or informational programming, or use in preparation for prosecution, defense, or settlement of litigation. – KRS 61.870(4)(b)

Rules Related to Duplication and Fees

- Records requested for noncommercial use:
 - Must be available for copying in standard hard copy or standard electronic format.
 - A requester can designate whether they would like the records in paper or electronic format if the agency maintains the record in both formats, but the agency is not required to convert standard hard copy records to electronic format.
 - Costs of copies of records cannot exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred. An agency cannot recover staff costs for copying standard form records.
 - If asked, an agency *may* provide a record in a nonstandard or otherwise tailored form and may recover staff costs in addition to actual costs incurred.

Rules Related to Duplication and Fees

- Records requested for commercial use:
 - May be obtained for a “reasonable fee” based on:
 - The cost to the agency of media, mechanical processing, and staff required to produce a copy of the records; and/or
 - The cost to the agency of the creation, purchase, or other acquisition of the public records.
 - An agency may require a certified statement from the requestor explaining the commercial purpose for which the records are to be used.
 - An agency may require the requestor to enter into a contract with the agency concerning the commercial use of the records and their fee.

Rules Related to Duplication and Fees

- An agency may make electronic records available for access online.
- An agency may condition online access to the records on paying a fee and entering into an agreement with the agency.
 - The fee charged cannot exceed:
 - The cost of the physical connection to the system and reasonable cost of computer access time; and
 - For commercial purposes, a reasonable fee based on the same criteria as if they were copied.

Agency Rules and Regulations Concerning Public Records

- KRS 61.876 requires that agencies adopt rules and regulations, in conformity with the Open Records Act, “to provide full access to public records, to protect public records from damage and disorganization, to prevent excessive disruption of its essential functions, to provide assistance and information upon request and to ensure efficient and timely action in response to application for inspection[.]”

Agency Rules and Regulations Concerning Public Records

- The rules and regulations must include:
 - The principal office and regular office hours of the agency.
 - The title, mailing address, and e-mail address of the official custodian of the agency's records.
 - The fees, authorized by statute, for copies.
 - The procedures to be followed in requesting public records.
- The agency's website must include, in a prominent location accessible to the public:
 - A copy of the agency's rules and regulations.
 - The mailing address, e-mail address, and phone number of the official custodian of the records or his or her designee to which all requests for public records shall be made; and
 - The form promulgated by the Attorney General for open records requests.
- Agencies may adopt the Finance and Administration Cabinet's model regulation concerning access to public records at 200 KAR 1:020.

Administrative Enforcement

- A person may forward the written request and denial from an agency to the Attorney General.
- The Attorney General then has twenty days to produce an opinion.
- A person can also appeal actions which they feel are an attempt to subvert the intent of the Open Records Act such as: the imposition of excessive fees, delay past the five-day response period, excessive extensions of time, or misdirection.
- Once the Attorney General renders its decision, the parties have thirty days to appeal to the Circuit Court in the county the agency is located or where the records are maintained.
- If there is no appeal, then the opinion becomes law and can be enforced in the appropriate Circuit Court.

Judicial Enforcement

- Alternatively, a person may immediately file suit in the Circuit Court of the county where the agency is located or the records are maintained.
- The public agency bears the burden of proof.
- Open Records Act cases take priority over all other matters and must be assigned a trial at the earliest possible date.
- Anyone who prevails against an agency where the violation was found to be willful may be awarded costs and reasonable attorney's fees. The court can also award the person \$25.00 per day they were denied the right to inspect or copy the record.