

1 AN ACT relating to public records for economic development.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 61.878 is amended to read as follows:

- 4 (1) The following public records are excluded from the application of KRS 61.870 to
5 61.884 and shall be subject to inspection only upon order of a court of competent
6 jurisdiction, except that no court shall authorize the inspection by any party of any
7 materials pertaining to civil litigation beyond that which is provided by the Rules of
8 Civil Procedure governing pretrial discovery:
- 9 (a) Public records containing information of a personal nature where the public
10 disclosure thereof would constitute a clearly unwarranted invasion of personal
11 privacy;
- 12 (b) Records confidentially disclosed to an agency and compiled and maintained
13 for scientific research. This exemption shall not, however, apply to records the
14 disclosure or publication of which is directed by another statute;
- 15 (c) 1. ~~{Upon and after July 15, 1992, }~~Records confidentially disclosed to an
16 agency or required by an agency to be disclosed to it, generally
17 recognized as confidential, ~~{or}~~ proprietary, ***or a trade secret*** which if
18 openly disclosed would permit an unfair commercial advantage to ***any***
19 ***person***~~{competitors of the entity that disclosed the records};~~
- 20 2. ~~{Upon and after July 15, 1992, }~~Records confidentially disclosed to an
21 agency or required by an agency to be disclosed to it, generally
22 recognized as confidential, ~~{or}~~ proprietary, ***or a trade secret, including***
23 ***but not limited to financial information, information regarding the***
24 ***identity or investment interest of shareholders, and present or future***
25 ***business plans,*** which are compiled and maintained:
- 26 a. In conjunction with an application for or the administration of a
27 loan or grant;

- 1 b. In conjunction with an application for or the administration of
2 assessments, incentives, inducements, and tax credits as described
3 in KRS Chapter 154;
- 4 c. In conjunction with the regulation of commercial enterprise,
5 including mineral exploration records, unpatented, secret
6 commercially valuable plans, appliances, formulae, or processes,
7 which are used for the making, preparing, compounding, treating,
8 or processing of articles or materials which are trade commodities
9 obtained from a person; or
- 10 d. For the grant or review of a license to do business **or participate in**
11 **an activity that is regulated by a public agency;**~~[-]~~
- 12 3. **Information declared confidential by the Kentucky Economic**
13 **Development Finance Authority pursuant to an administrative**
14 **regulation; and**
- 15 **4. Records that pertain to proposed economic development incentives not**
16 **adopted in final action through acceptance by the grantee and**
17 **approval by the relevant public agency.**
- 18 **5.** The exemptions provided for in subparagraphs 1. **to 4.**~~and 2.~~ of this
19 paragraph shall not apply to records the disclosure or publication of
20 which is directed by another statute;
- 21 (d) Public records pertaining to a prospective location of a business or industry
22 where no previous public disclosure has been made of the business' or
23 industry's interest in locating in, relocating within or expanding within the
24 Commonwealth **or locating in, relocating within, or expanding within states,**
25 **territories, or countries with whom the Commonwealth had a reciprocal**
26 **economic development agreement at the time of the creation or receipt of**
27 **the records.** This exemption shall not include those records pertaining to

- 1 application to agencies for permits or licenses necessary to do business or to
2 expand business operations within the state, except as provided in paragraph
3 (c) of this subsection;
- 4 (e) Public records which are developed by an agency in conjunction with the
5 regulation or supervision of financial institutions, including but not limited to,
6 banks, savings and loan associations, and credit unions, which disclose the
7 agency's internal examining or audit criteria and related analytical methods;
- 8 (f) The contents of real estate appraisals, engineering or feasibility estimates and
9 evaluations made by or for a public agency relative to acquisition of property,
10 until such time as all of the property has been acquired. The law of eminent
11 domain shall not be affected by this provision;
- 12 (g) Test questions, scoring keys, and other examination data used to administer a
13 licensing examination, examination for employment, or academic examination
14 before the exam is given or if it is to be given again;
- 15 (h) Records of law enforcement agencies or agencies involved in administrative
16 adjudication that were compiled in the process of detecting and investigating
17 statutory or regulatory violations if the disclosure of the information would
18 harm the agency by revealing the identity of informants not otherwise known
19 or by premature release of information to be used in a prospective law
20 enforcement action or administrative adjudication. Unless exempted by other
21 provisions of KRS 61.870 to 61.884, public records exempted under this
22 provision shall be open after enforcement action is completed or a decision is
23 made to take no action; however, records or information compiled and
24 maintained by county attorneys or Commonwealth's attorneys pertaining to
25 criminal investigations or criminal litigation shall be exempted from the
26 provisions of KRS 61.870 to 61.884 and shall remain exempted after
27 enforcement action, including litigation, is completed or a decision is made to

- 1 take no action. The exemptions provided by this subsection shall not be used
2 by the custodian of the records to delay or impede the exercise of rights
3 granted by KRS 61.870 to 61.884;
- 4 (i) Preliminary drafts, notes, correspondence with private individuals, other than
5 correspondence which is intended to give notice of final action of a public
6 agency;
- 7 (j) Preliminary recommendations, and preliminary memoranda in which opinions
8 are expressed or policies formulated or recommended;
- 9 (k) All public records or information the disclosure of which is prohibited by
10 federal law or regulation;
- 11 (l) Public records or information the disclosure of which is prohibited or
12 restricted or otherwise made confidential by enactment of the General
13 Assembly;
- 14 (m) 1. Public records the disclosure of which would have a reasonable
15 likelihood of threatening the public safety by exposing a vulnerability in
16 preventing, protecting against, mitigating, or responding to a terrorist act
17 and limited to:
- 18 a. Criticality lists resulting from consequence assessments;
- 19 b. Vulnerability assessments;
- 20 c. Antiterrorism protective measures and plans;
- 21 d. Counterterrorism measures and plans;
- 22 e. Security and response needs assessments;
- 23 f. Infrastructure records that expose a vulnerability referred to in this
24 subparagraph through the disclosure of the location, configuration,
25 or security of critical systems, including public utility critical
26 systems. These critical systems shall include but not be limited to
27 information technology, communication, electrical, fire

- 1 suppression, ventilation, water, wastewater, sewage, and gas
2 systems;
- 3 g. The following records when their disclosure will expose a
4 vulnerability referred to in this subparagraph: detailed drawings,
5 schematics, maps, or specifications of structural elements, floor
6 plans, and operating, utility, or security systems of any building or
7 facility owned, occupied, leased, or maintained by a public agency;
8 and
- 9 h. Records when their disclosure will expose a vulnerability referred
10 to in this subparagraph and that describe the exact physical
11 location of hazardous chemical, radiological, or biological
12 materials.
- 13 2. As used in this paragraph, "terrorist act" means a criminal act intended
14 to:
- 15 a. Intimidate or coerce a public agency or all or part of the civilian
16 population;
- 17 b. Disrupt a system identified in subparagraph 1.f. of this paragraph;
18 or
- 19 c. Cause massive destruction to a building or facility owned,
20 occupied, leased, or maintained by a public agency.
- 21 3. On the same day that a public agency denies a request to inspect a public
22 record for a reason identified in this paragraph, that public agency shall
23 forward a copy of the written denial of the request, referred to in KRS
24 61.880(1), to the executive director of the Kentucky Office of Homeland
25 Security and the Attorney General.
- 26 4. Nothing in this paragraph shall affect the obligations of a public agency
27 with respect to disclosure and availability of public records under state

- 1 environmental, health, and safety programs.
- 2 5. The exemption established in this paragraph shall not apply when a
- 3 member of the Kentucky General Assembly seeks to inspect a public
- 4 record identified in this paragraph under the Open Records Law;
- 5 (n) Public or private records, including books, papers, maps, photographs, cards,
- 6 tapes, discs, diskettes, recordings, software, or other documentation regardless
- 7 of physical form or characteristics, having historic, literary, artistic, or
- 8 commemorative value accepted by the archivist of a public university,
- 9 museum, or government depository from a donor or depositor other than a
- 10 public agency. This exemption shall apply to the extent that nondisclosure is
- 11 requested in writing by the donor or depositor of such records, but shall not
- 12 apply to records the disclosure or publication of which is mandated by another
- 13 statute or by federal law;
- 14 (o) Records of a procurement process under KRS Chapter 45A or 56. This
- 15 exemption shall not apply after:
- 16 1. A contract is awarded; or
- 17 2. The procurement process is canceled without award of a contract and
- 18 there is a determination that the contract will not be resolicited; and
- 19 (p) Communications of a purely personal nature unrelated to any governmental
- 20 function.
- 21 (2) No exemption in this section shall be construed to prohibit disclosure of statistical
- 22 information not descriptive of any readily identifiable person.
- 23 (3) No exemption in this section shall be construed to deny, abridge, or impede the
- 24 right of a public agency employee, including university employees, an applicant for
- 25 employment, or an eligible on a register to inspect and to copy any record including
- 26 preliminary and other supporting documentation that relates to him. The records
- 27 shall include, but not be limited to, work plans, job performance, demotions,

1 evaluations, promotions, compensation, classification, reallocation, transfers, lay-
2 offs, disciplinary actions, examination scores, and preliminary and other supporting
3 documentation. A public agency employee, including university employees,
4 applicant, or eligible shall not have the right to inspect or to copy any examination
5 or any documents relating to ongoing criminal or administrative investigations by
6 an agency.

7 (4) If any public record contains material which is not excepted under this section, the
8 public agency shall separate the excepted and make the nonexcepted material
9 available for examination.

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