

1 AN ACT relating to access to the records and meetings of public agencies.

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

3 ➔SECTION 1. A NEW SECTION OF KRS 61.870 TO 61.884 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Agency-designated email account" means an email account hosted by a*
7 *third-party provider that has been created in accordance with subsection (4)*
8 *of this section; and*

9 *(b) "Agency-furnished email account" means an email account that is created,*
10 *established, furnished, maintained, or supported by the Commonwealth*
11 *Office of Technology or another department, office, agency, or vendor that*
12 *is accountable to a public agency or the appointing authority of a public*
13 *agency.*

14 *(2) Except as provided in subsection (3) or (4) of this section, a public agency shall*
15 *cause to be furnished to each of its officers, employees, board members, and*
16 *commission members an agency-furnished email account for the purpose of*
17 *conducting the business of the public agency.*

18 *(3) The governing body of a public agency or its appointing authority shall have the*
19 *authority to identify, in writing, the names of specific personnel whose job*
20 *functions and responsibilities are not compatible with, or do not require, the use*
21 *of an agency-furnished email account. Nothing in this section shall require a*
22 *public agency to furnish an email account to those personnel who are identified*
23 *under this subsection.*

24 *(4) In the event that a public agency does not have a department, agency, office, or*
25 *vendor accountable to it that is capable of, or its appointing authority is incapable*
26 *of, providing agency-furnished email accounts, the public agency may approve*
27 *the use of a third-party provider for the purpose of creating an agency-designated*

1 email account for the member or employee to conduct public business, as follows:

2 (a) A public agency acting pursuant to this subsection shall:

3 1. Cause the creation of the agency-designated email account with the
4 third-party provider and assign and provide access to it to the member
5 or employee; or

6 2. Require the member or employee to create the agency-designated
7 email account with the third-party provider and to register the account
8 address with the official records custodian of the public agency; and

9 (b) The public agency shall maintain a log containing the addresses of any
10 agency-designated email accounts assigned or registered pursuant to this
11 subsection. The log of agency-designated email account addresses shall be
12 subject to disclosure pursuant to KRS 61.870 to 61.884. Emails and other
13 documents contained within an agency-designated email account shall be
14 deemed to be in the possession of the public agency for the purposes of KRS
15 61.870 to 61.884.

16 (5) An employee of a public agency shall not use an email account other than an
17 agency-furnished email account or agency-designated email account to conduct
18 the business of the public agency.

19 (6) An employee who violates subsection (5) of this section shall be subject to
20 appropriate discipline by his or her agency's appointing authority or governing
21 body, in addition to other remedies prescribed by law.

22 (7) A member of a board, commission, or public agency shall not use an email
23 account other than an agency-furnished email account or agency-designated
24 email account to conduct the business of the board, commission, or public
25 agency.

26 (8) In addition to other remedies provided by law, a member of a board, commission,
27 or other public agency who violates subsection (7) of this section shall be subject

1 to removal by the officer or the governing authority who appointed that member
2 or otherwise has the authority to remove the member.

3 (9) (a) If a public agency appoints a member to a board or commission, the board
4 or commission shall publish on its website for the duration of the appointed
5 board or commission member's term:

6 1. The name of the board or commission member;

7 2. a. The board or commission member's agency-designated email
8 account or agency-furnished email account, as appropriate; or
9 b. A link to a form to contact the board or commission member's
10 agency-designated email account or agency-furnished email
11 account;

12 3. The board or commission member's appointment date; and

13 4. The date upon which the term of the board or commission member
14 ends.

15 (b) If the board or commission does not have a website, then the public agency
16 that appointed the board or commission member shall publish the
17 information contained in paragraph (a) of this subsection on its website.

18 (10) Notwithstanding any other provision of KRS 61.870 to 61.884, a public agency
19 that complies with subsections (2), (3), and (4) of this section shall only be
20 required to search for or produce to a requesting party electronic information or
21 documents that are stored or contained in:

22 (a) An electronic device or system that is the property of, or under the control
23 of, the public agency; or

24 (b) An email account that is an agency-furnished or agency-designated email
25 account.

26 ➔Section 2. KRS 61.848 is amended to read as follows:

27 (1) The Circuit Court of the county where the public agency has its principal place of

- 1 business or where the alleged violation occurred shall have jurisdiction to enforce
2 the provisions of KRS 61.805 to 61.850, as they pertain to that public agency, by
3 injunction or other appropriate order on application of any person.
- 4 (2) A person alleging a violation of the provisions of KRS 61.805 to 61.850 shall not
5 have to exhaust his or her remedies under KRS 61.846 before filing suit in a Circuit
6 Court. However, he or she shall file suit within sixty (60) days from his or her
7 receipt of the written denial referred to in subsections (1) and (2) of KRS 61.846 or,
8 if the public agency refuses to provide a written denial, within sixty (60) days from
9 the date the written complaint was submitted to the presiding officer of the public
10 agency.
- 11 (3) In an appeal of an Attorney General's decision, where the appeal is properly filed
12 pursuant to subsection (4)(a) of KRS 61.846, the court shall determine the matter de
13 novo.
- 14 (4) Except as otherwise provided by law or rule of court, proceedings arising under this
15 section take precedence on the docket over all other causes and shall be assigned for
16 hearing and trial at the earliest practicable date.
- 17 (5) Any rule, resolution, regulation, ordinance, or other formal action of a public
18 agency without substantial compliance with the requirements of KRS 61.810,
19 61.815, 61.820, ~~and KRS~~ 61.823, and 61.840 shall be voidable by a court of
20 competent jurisdiction.
- 21 (6) Any person who prevails against any agency in any action in the courts regarding a
22 violation of KRS 61.805 to 61.850, where the violation is found to be willful, may
23 be awarded costs, including reasonable attorneys' fees, incurred in connection with
24 the legal action. In addition, it shall be within the discretion of the court to award
25 the person an amount not to exceed one hundred dollars (\$100) for each instance in
26 which the court finds a violation. Attorneys' fees, costs, and awards under this
27 subsection shall be paid by the agency responsible for the violation.