

1 AN ACT relating to open records.

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

3 ➔Section 1. KRS 61.880 is amended to read as follows:

4 (1) If a person enforces KRS 61.870 to 61.884 pursuant to this section, he shall begin
5 enforcement under this subsection before proceeding to enforcement under
6 subsection (2) of this section. Each public agency, upon any request for records
7 made under KRS 61.870 to 61.884, shall determine within three (3) days, excepting
8 Saturdays, Sundays, and legal holidays, after the receipt of any such request whether
9 to comply with the request and shall notify in writing the person making the request,
10 within the three (3) day period, of its decision. An agency response denying, in
11 whole or in part, inspection of any record shall include a statement of the specific
12 exception authorizing the withholding of the record and a brief explanation of how
13 the exception applies to the record withheld. The response shall be issued by the
14 official custodian or under his authority, and it shall constitute final agency action.

15 (2) (a) If a complaining party wishes the Attorney General to review a public
16 agency's denial of a request to inspect a public record, the complaining party
17 shall forward to the Attorney General a copy of the written request and a copy
18 of the written response denying inspection. If the public agency refuses to
19 provide a written response, a complaining party shall provide a copy of the
20 written request. The Attorney General shall review the request and denial and
21 issue within twenty (20) days, excepting Saturdays, Sundays and legal
22 holidays, a written decision stating whether the agency violated provisions of
23 KRS 61.870 to 61.884.

24 (b) In unusual circumstances, the Attorney General may extend the twenty (20)
25 day time limit by sending written notice to the complaining party and a copy
26 to the denying agency, setting forth the reasons for the extension, and the day
27 on which a decision is expected to be issued, which shall not exceed an

1 additional thirty (30) work days, excepting Saturdays, Sundays, and legal
2 holidays. As used in this section, "unusual circumstances" means, but only to
3 the extent reasonably necessary to the proper resolution of an appeal:

- 4 1. The need to obtain additional documentation from the agency or a copy
5 of the records involved;
- 6 2. The need to conduct extensive research on issues of first impression; or
- 7 3. An unmanageable increase in the number of appeals received by the
8 Attorney General.

9 (c) On the day that the Attorney General renders his decision, he shall mail a copy
10 to the agency and a copy to the person who requested the record in question.
11 The burden of proof in sustaining the action shall rest with the agency, and the
12 Attorney General may request additional documentation from the agency for
13 substantiation. The Attorney General may also request a copy of the records
14 involved but they shall not be disclosed.

15 (3) Each agency shall notify the Attorney General of any actions filed against that
16 agency in Circuit Court regarding the enforcement of KRS 61.870 to 61.884. The
17 Attorney General shall not, however, be named as a party in any Circuit Court
18 actions regarding the enforcement of KRS 61.870 to 61.884, nor shall he have any
19 duty to defend his decision in Circuit Court or any subsequent proceedings.

20 (4) If a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency
21 short of denial of inspection, including but not limited to the imposition of
22 excessive fees, delay past the three (3) day period described in subsection (1) of
23 this section, excessive extensions of time, or the misdirection of the applicant, the
24 person may complain in writing to the Attorney General, and the complaint shall be
25 subject to the same adjudicatory process as if the record had been denied.

26 (5) (a) A party shall have thirty (30) days from the day that the Attorney General
27 renders his decision to appeal the decision. An appeal within the thirty (30)

1 day time limit shall be treated as if it were an action brought under KRS
2 61.882.

3 (b) If an appeal is not filed within the thirty (30) day time limit, the Attorney
4 General's decision shall have the force and effect of law and shall be
5 enforceable in the Circuit Court of the county where the public agency has its
6 principal place of business or the Circuit Court of the county where the public
7 record is maintained.