

Open Records

For students, parents, voters, taxpayers, and anyone else who is interested in public education, Kentucky's Open Records laws ensure important opportunities to learn about the work of all public agencies.

WHO MUST FOLLOW THE OPEN RECORDS LAW?

The Open Records law applies to “public agencies.” That includes nearly all bodies that must follow the Open Meetings law, including local school boards and school councils, and state bodies like the Kentucky Board of Education, Education Professional Standards Board, and Council on Postsecondary Education. More broadly, the law applies to any agency created by state law or executive order. In addition, the Open Records law applies to those who work for executive departments and courts, such as local school superintendents and the Kentucky Department of Education. Open Records rules also apply to bodies that get at least 25% of their funding from state or local authorities—except those who earn that money by selling goods and services under a public competitive procurement. Plus, if an agency subject to the law appoints a committee, that new committee must also follow the law. (The “Linking the Law” box to the right explains how to find the exact wording of the Open Records Law, including the Open Records definition of “public agency.”)

WHO CAN INSPECT AND COPY PUBLIC RECORDS?

Anyone can inspect public records by submitting a written request, defined as including “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” unless a specific Open Records exemption applies.

Anyone can get copies, by making a written request and paying the actual costs of reproduction, not including the costs of staff required to make the copies, plus mailing costs if the copies are to be mailed—but do know that there are now limits on getting copies to use for commercial purposes.

WHAT RECORDS ARE EXEMPT?

There are thirteen exemption categories, listed in KRS 61.878, which include:

- “Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy”
- “Test questions, scoring keys, and other examination data ... before the exam is given or if it is to be given again”
- “Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency”
- “All public records or information the disclosure of which is prohibited by federal law or regulation”
- Nine other categories that you can see by checking the Linking the Law box and going to section 61.878.

WHAT HAPPENS IF THE RECORDS ARE NOT EASILY AVAILABLE?

Sometimes public records are “in active use, in storage or not otherwise available.” In those cases, the official custodian must “set a later date for inspection, not more than three days from receipt of the application or give a detailed explanation of the cause for further delay and name the place, time, and earliest date on which the public record will be available.” (The quoted language comes from KRS 61.872.)

LINKING THE LAW

To see the exact legal rules, go to www.lrc.ky.gov/Statutes/index.aspx, and choose Chapter 61.

For Open Records, scroll down to find these sections:

- 61.870 Definitions
- 61.871 Policy of KRS 61.870 to 61.884
- 61.8715 Legislative findings.
- 61.872 Right to inspection -- Limitation
- 61.874 Abstracts, memoranda, copies
- 61.8745 Damages recoverable by public agency
- 61.876 Agency to adopt rules and regulations
- 61.878 Certain public records exempted
- 61.880 Denial of inspection
- 61.882 Jurisdiction of Circuit Court in action seeking right of inspection
- 61.884 Person's access to record relating to him

WHAT HAPPENS IF AN AGENCY SEEMS TO BREAK OPEN RECORDS RULES?

It is always good practice to communicate with the agency itself in writing, describing the rule and how it seems to have been broken. That may allow for a quick and quiet resolution of the problem. If that does not work, the relevant laws provide a process for asking the Attorney General to rule quickly on whether the rules have been followed. In the “Linking the Law” box, KRS 61.880 explains how to start those procedures if needed.

WHAT RECORDS MUST AN AGENCY KEEP, AND FOR HOW LONG?

In Kentucky, the main rules on keeping documents are set by the Department of Libraries and Archives and included in records retention schedules. The schedule for public school districts includes all parts of the district, including schools, school councils, central office, school board, and other parts of the districts’ work. For example, the schedule specifies that council and board minutes are permanent records, while the ballots for school council elections must be kept for three years and then can be destroyed. The schedule is available at kdla.ky.gov/records/retentionschedules.