

Chief Administrative Office Policy Memorandum	Date of Issue July 23, 1997 Revised December 15, 2004 December 11, 2013 August 3, 2020 August 14, 2020	Expiration Date NA	No. 8R
To All Divisions and Departments	Subject Open Records Policy		
Signature 			

I. OPEN RECORDS REQUEST - IN GENERAL

1. The Open Records Act is based upon the public's right to expect its agencies to execute their statutory functions. A policy of disclosure provides the impetus to review whether public servants are indeed serving the public. The purpose of the disclosure focuses on the public's right to be informed as to what the government is doing by monitoring the effectiveness of the government agency.
2. The public's right to know is limited through exemptions established by statute. Private individuals have the right to live their lives without unwarranted interference by the public about matters in which the public is not necessarily concerned. The purpose of the Open Records Act is not fostered by revealing information about the private lives of individuals that reveal little or nothing about a government agency's conduct. Other reasons for limited disclosure include protection of an agency's decision-making process by encouraging the free exchange of opinions and ideas; protection of confidential and proprietary business records disclosed by private businesses to a government agency; and protection of taxpayer money regarding purchase and sale of real estate.
3. Each department, division and office shall designate a records custodian and a back-up records custodian. The records custodian shall be in charge of fully responding to open records requests that relate to their division. The Department of Law will assist in interpreting the requirements of the Open Records Act and in formulating responses, but the designated custodian shall be primarily responsible for making timely responses to requests and for gathering and redacting documents. The names of records custodians and back-up records custodians shall be submitted to the Council Clerk. The Council Clerk shall be notified when there is a change in the records custodian or back-up custodian. A back-up records custodian shall be designated because it is not a proper excuse for a delayed response that the primary custodian is out of the office.
4. Ordinances, resolutions, executed contracts, opened bids, handbooks, training materials (unless they relate to jail or police security), time records, work orders, accounts payable, material discussed or adopted at an open session of a public

meeting, employee disciplinary actions, and employee gross salaries, are examples of Government records which must be made available upon any request.

5. Oral requests are not formal open records requests under the law. If you receive an oral request for a document that you are certain is open for inspection or can verify its status quickly, release the document without requiring a written open records request. A written response is not required to this type of request. Oral requests should only be responded to when it is absolutely certain the responsive document is nonexempt and the document is readily available. If there is a question concerning exempt or nonexempt status of a document, ask that the requestor put the request in writing.

It is not proper to allow a requestor to review the document and then require a written request be filed in order to get a copy.

6. Each records custodian shall keep an open records log documenting the open records requests their division receives. The log shall contain the date the request was received, the assigned log number, the name of the requestor, a brief explanation of the request, and the date or dates a responsive letter was sent. A file of the requests received with responsive correspondence, including emails if the request or responsive correspondence was sent via email, shall be maintained in numerical order by log number. This makes reference fairly easy when multiple requestors request the same documents. Logs shall be retained for five (5) years pursuant to the records retention policy. Open records requests and responsive correspondence shall be retained for one (1) year.
7. Generally, the identity of the requestor or the reason a party requests a record is not material unless a request is made for a commercial purpose.
8. The Government charges for copies are as follows:
 - A. Photocopies — 10 cents per page.
 - B. Oversize copies — the actual cost.
 - C. Photographs - \$5 per print (police) or actual cost.
 - D. Video or audiotape cassettes — the actual cost of the tape.*
 - E. Computer disc transfer — the actual cost of the disc.*
 - F. Mailed copies — 10 cents per page plus postage (no administrative costs).
 - G. There shall be no cost for records sent via email.

* No cost if the requestor provides the tape or disc.

II. OPEN RECORDS REQUEST PROCEDURE

1. Open records requests will be accepted in written form by mail carrier, fax, hand-delivery, or electronic mail (email). Requests via email must be submitted via the electronic form and method provided on www.lexingtonky.gov/open-records-request to better ensure receipt and proper processing of the request.

2. Responses to written requests shall be in writing and sent by mail, fax, or email within three business days pursuant to KRS 61.880(1). The day the request is received does not count as one of the three business days. (Example: If a request is received on Monday, the first day is Tuesday, the second day is Wednesday, and the third day — the response due day — is Thursday.)
3. Any written response or letter to the requestor described in this policy may be sent via email, if the requestor provides an email address. However, it must be in PDF form attached to the email in the same letter format as a response sent via mail or fax, with the body of the email directing the requestor to the attachment.
4. If your division receives an open records request that does not pertain to your division, please immediately forward the request to the proper division's record custodian, as the response time begins when any division of the LFUCG receives the request. The requirement of providing a written response within three days is not met by notifying the requestor that a request was forwarded to another division for a response. The proper division must respond within three days of the initial receipt of the request.
5. Furthermore, as open records requests via email should be submitted as provided in paragraph 1, if an employee receives a request via email from the public, please immediately respond to the request by stating, "Per its Open Records Policy (CAO Policy 8R), the Lexington-Fayette Urban County Government only accepts email requests for records under the Kentucky Open Records Act via the electronic form and method provided on www.lexingtonky.gov/open-records-request. If you would like to submit a request for records electronically, you must use this method. Otherwise, LFUCG also accepts requests for records via mail, hand-delivery, or fax."
6. If a division receives an open records request and the Urban County Government is not the official custodian of the requested records, (for example, records maintained by the Health Department or County Clerk) the division shall send a written response within three (3) business days to the requestor stating that the LFUCG is not the official custodian and furnishing the requestor with the name and address of the official custodian.
7. If the records requested are voluminous or are stored in the Records and Archives Center, a response must be sent to the requestor within three business days after the request was received stating that "Due to the voluminous nature of your request, and the fact that the records are not centrally located, it will take some time to process your request. Documents responsive to your request will be available for inspection on [ENTER DATE DOCUMENTS WILL BE AVAILABLE]. At that time, all nonexempt documents will be made available for your inspection. If, due to some unforeseen circumstance, the records cannot be made available at that time, we will update you via letter with the correct date documents will be available for inspection." After your initial letter, a follow up letter informing the requestor that all nonexempt documents are available or providing the correct date all non-exempt documents will be available must be sent on the date provided in the previous correspondence. This type of response is to be used only if the

request is voluminous and the records are not centrally located. It is not to be used on every request to extend the response time.

8. If at all possible, original documents shall be made available for inspection during regular business hours at the division office. A PDF version of the documents may also be emailed if the requestor provides an email address. However, if the documents are unable to be emailed (due to email size limitations, for example), they must be made available for in-person inspection or mailed if the requester lives outside Fayette County as provided in paragraph 11. Faxing documents to requestors is not permitted. It is not a proper response to refer a requestor to a website. Hard copies must be provided to the requestor during the regular business hours at the division office. A requestor is not required to make an appointment to inspect the documents, but as a courtesy, you may ask them to do so. The original documents are to be inspected at the division office and shall not leave the office.
9. If a requestor wants copies of the documents to take with them, calculate the copying charge pursuant to paragraph 8 in the General Comments section, take payment by cash or check, then copy the records and give them to the requestor.
10. The requested records should be kept available for inspection for thirty days from the date of the final response sent by the division. In the final response letter it should be stated in the last paragraph, "The records will be available for your inspection for thirty days. If the records are not inspected within the allowed thirty days, they will be returned to the filing system and the matter will be considered closed." If a requestor does not inspect the records within thirty days, and at a later date requests to inspect the same records, this request may be denied as a duplicate request pursuant to 97-ORD-153 and 95-ORD-105. Please contact the Department of Law if this situation arises.
11. KRS 61.872(3)(a) provides that persons who live in Fayette County may inspect public records during regular office hours of the public agency. Pursuant to KRS 61.872(3)(b), if a person lives outside of Fayette County, the division's response describing the available documents should state, pursuant to KRS 61.872(3)(b), "Since you live outside of Fayette County, you may receive your documents by mail upon the Government's receipt of the copying and mailing costs." This means that once the documents have been located the following steps should be taken:
 - Letter to requestor outside of Fayette County stating the records are available for inspection and will be mailed to them once a check for the copying costs and the postage costs has been received. Add these two items together for a total cost.
 - Once payment has been received, make copies of the documents and mail them to the requestor.

Those located outside Fayette County may also receive available documents via email, if the requestor provides an email address.

11. If an open records request is made for a commercial purpose, the requestor must so state in the request. If an open records request is received that appears to be for a commercial purpose, but does not so state in the request, the immediate response should state that the request cannot be processed until it is determined if the request is being made for a commercial purpose pursuant to KRS 61.874. A "commercial purpose" means the use of any part of a public record 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 a fee. KRS 61.870(4)(a). Commercial purpose does not include use by media or use by attorneys for litigation.
12. If you receive a request involving a commercial purpose, keep track of the time spent working on the request and charge your salary rate X the number of hours spent working on the response to the request to the requestor. KRS 61.874(4)(c).
13. If you believe the requestor is using the documents for a commercial purpose without stating so after you have requested that they state the commercial purpose, please contact the Department of Law.
14. All requests shall be answered by the division pertaining to the subject matter of that request. Any questions may be addressed by the division to the Department of Law.
15. If any division receives an open records request from the media, forward a copy of the request and your response to the Department of Law and the Mayor's Director of Communications. If any questions arise, contact the Law Department.
16. If you receive an open records request in which the Urban County Government is a party to litigation, forward it to the Department of Law immediately.
17. If an exemption is used to deny the inspection of certain documents, the specific statutory exception shall be cited in the response and a brief explanation of how the exception applies to the record withheld shall be given. An example is, if you redact social security numbers and home addresses from a record, your letter should state "Pursuant to the privacy exemption in KRS 61.878(1)(a), social security numbers and home addresses have been redacted from the documents provided to you."
18. The Attorney General has stated that agencies do not have to provide documents that do not exist, nor honor requests for information as opposed to requests for described documents, nor create records that do not already exist in order to answer questions, nor are they required to do research to make lists or compile information to answer questions. 00-ORD-04, 99-ORD-71, 01-ORD-216. This response should be used if a requestor asks questions rather than requesting to inspect documents. The Urban County Government is not required to explain or answer questions regarding the documents. The documents need to be provided to the requestor for their review and to draw their own conclusions. However, it is permissible to explain the documents to the requestor if you choose to do so.

19. Raw data which may be organized by a query may be provided in a response to an open records request. If providing the data requires a computer program to be written, the requestor should be notified that a special program would have to be written to create documents responsive to the request; be given an estimate of the time needed to create the program; and be provided an estimate for the total cost of the creation of the program (time spent creating the program X \$50.00 per hour). The requestor must send in payment before the program is written. We do not want to get into the instances of writing programs, creating documents, and then the requestor deciding not to pay for the creation of the documents. A "query" is manipulation of data fields by general personnel in the Urban County Government. The "computer program" is a specific program that must be written by a computer analyst in the Division of Computer Services.
20. We often receive requests for documents which we possess but which are not indexed in the manner the requestor asks for them. An example of this is when a requestor asks for documents regarding properties owned by Mr. X. If the responding division indexes their records by address and not by name of the property owner, the proper response to the requestor is, "The records are not indexed in the manner in which you requested them," and inform the requestor how the records are indexed.
21. The Attorney General has stated that 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 that it generally need not be honored. Such a request places an unreasonable burden on the agency to produce often incalculable numbers of widely dispersed and ill-defined public records. 00-ORD-132. Furthermore, the Attorney General has stated that the Open Records Act was not intended to provide a requestor with particular information or to require public agencies to compile information to conform to the parameters of a given request. 00-ORD-07. If such a request is received, a proper response would include: "The Government cannot ascertain the nature and scope of your request. Unless your request is clarified, innumerable employee hours will be spent searching for undefined records. Once your request is clarified, a search can be conducted. Requests that place an unreasonable burden on a public agency need not be honored. KRS 61.872(6)."

Examples of this type of request would be a request to inspect "all documents regarding 200 East Main Street, Lexington, Kentucky," or "all documents regarding Mr. X."

22. Sometimes requestors submit requests which contain an overly broad request, but do describe some documents with reasonable particularity. An example is all documents regarding 200 East Main Street, including but not limited to, code violations and nuisance liens. For this type of request, the above-referenced paragraph may be used with an additional paragraph which states that documents have been identified that are responsive to the request regarding code violations and nuisances liens, and that the rest of their request cannot be processed until the request is clarified.

23. Document requests must specify a timeframe for the documents to be inspected. If no timeframe is stated in the request, respond to the requestor asking for a timeframe.
24. E-mail — As more and more employees are hooked into the Local Area Network, messages between and among employees will raise open records questions. Most E-mail messages constitute preliminary notes and could be excluded from inspection by KRS 61.878 (1)(i). If the E-mail reflects final action, it would be subject to inspection.

III. OPEN RECORDS EXEMPTIONS

The Open Records Act allows public agencies to prohibit inspection of all or a portion of documents in certain situations. The list below contains examples of some government records which may be excluded from inspection.

1. KRS 61 878(1)(a): Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

This "privacy exemption" involves the release of information that constitutes an unwarranted invasion of personal privacy. The purpose of the Open Records Act is not fostered by the disclosure of information about private individuals that is accumulated in various government files that reveal little or nothing about an agency's own conduct. The relevant public interest supporting the disclosure in this instance is nominal at best.

Examples of personal information to be redacted from documents are social security numbers, home addresses, home telephone numbers, date of birth, marital status, grades or scores, work references from Human Resources, performance evaluations, financial information (i.e. deductions, W-2, W-4, payroll deductions), unsuccessful applicants on certified lists of eligible employees, salary or hourly wage at other places of employment outside of government, employee numbers and medical records. Once the personal information has been redacted, the documents may be provided for inspection.

2. KRS 61.878(1)(c): Records confidentially disclosed to an agency, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records, or which are compiled and maintained in conjunction with a loan or grant or in conjunction with an application for or the administration of assessments, incentives, etc., as described in KRS Chapter 154.

The purpose of this exemption is to protect businesses that do business with, or are regulated by, the public agencies from competitive harm that may result from the public disclosure of sensitive and commercial information which is ordinarily not available.

If you are unsure whether the information is confidential or proprietary, contact the company that provided the information to determine if they consider the information confidential or proprietary and their basis for considering it confidential.

3. KRS 61.8787(1)(d): Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth.

The purpose of this exemption is to protect and encourage new business locations within a government agency's regional location.

4. KRS 61.878(1)(f): The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired.

The purpose of this exemption is to protect taxpayers' dollars as to property the Government is interested in purchasing.

5. KRS 61.878(1)(g): Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination before the exam is given or if it is to be given again.

The purpose of this exemption is to protect the government from immediately having to revise its testing procedures if the test or scoring keys are made public.

Division of Human Resources, safety training or other in-house qualification tests are examples.

6. KRS 61.878(1)(h): Records of law enforcement agencies.

This exclusion is for active administrative and criminal files. These include witness statements, photographs and other investigative matters. KRS 17.150 also applies to criminal investigations.

7. KRS 61.878(1)(i): Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency.

8. KRS 61.878(1)(j): Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended.

These exemptions are intended to protect the integrity of the public agencies' decision-making process by encouraging the free exchange of opinions and ideas and to promote informed and frank discussions of matters of concern to the agency. Should these records be subject to public scrutiny, there would be a chilling effect cast on the ability of the government to function as a system. These exemptions promote an open atmosphere among staff members to express their opinions and give recommendations. It does not matter whether the recommendation or opinion is a first, second or last recommendation. The exemption applies until the government agency has made a final decision and taken final agency action.

The preliminary records exceptions embody a policy that the public's right to know and have access to records does not attach until the public is actually affected by

the agency action. The public is not affected until a public agency has taken final action.

Only the final report, which notifies the public of the final agency action or decision, is available for public inspection.

With regard to reports and materials prepared by outside agencies as well as private organizations, the above exemptions may properly be used to withhold these reports from public inspection. Only when the government agency has made a decision whether to accept or reject the report of the outside agency can the document be made available for public inspection.

Some preliminary documents lose their exemption if they are adopted as part of an agency's final report or final action. This means the final report or final action of the agency; specifically refers and states that it adopts the preliminary materials.

9. KRS 61.878(1)(k): All public records and information the disclosure of which is prohibited by federal law or regulation.

Those divisions working with federal agencies should be aware of the records covered by this exception. An example is medical records exempt under the Health Insurance Portability and Accountability Act (HIPAA).

10. KRS 61.878(1)(l): Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.

Accident reports, and juvenile, domestic relations and probation records fit in this category, as do documents qualifying as attorney work product.

11. KRS 61.878(1)(m): The so-called Homeland Security Exemption exempts documents when their release has a reasonable likelihood of threatening the public safety by exposing a vulnerability in many operational and security areas of government systems. When an open records request is denied pursuant to the Homeland Security Exemption, a copy of the denial along with the original request must be forwarded to the executive director of the Kentucky Office of Homeland Security and the Attorney General. The Department of Law should be contacted when there is belief the Homeland Security Exemption is appropriate.

12. KRS 61.878(2): Documents reflecting statistics are not exempt from inspection even if the underlying document is exempt. The Government's EEOC reporting forms are open records even though the individual forms from which they are gathered are not. Also, tax collection receipts are open records, but individual account information may not be.

13. KRS 61.878(3): Employees have a right to review any documents that relate to them except documents created in the course of an ongoing administrative or criminal investigation.

If a file or an individual document contains exempt as well as non-exempt material, it is the burden of the public agency to remove or mask the exempt material.

14. KRS 61.878(5): None of these exclusions prevents the transfer of documents between government agencies for legitimate governmental purposes.