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From: **Lowe, Melanie (DPA)** <melanie.lowe@ky.gov>

Date: Fri, Apr 1, 2022 at 2:52 PM

Subject: RE: Meeting link

To: Steve Suo [REDACTED]

Cc: M Green [REDACTED]

Steve,

Here is the statute in Kentucky which includes the “unreasonable burden” standard highlighted below.

61.872 Right of Kentucky residents to inspect public records -- Written application -- Limitation.

(1) All public records shall be open for inspection by any resident of the Commonwealth, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No resident of the Commonwealth shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.

(2) (a) Any resident of the Commonwealth shall have the right to inspect public records. The official custodian may require a written application, signed by the applicant and with his or her name printed legibly on the application, describing the records to be inspected. The official custodian may require the applicant to provide a statement in the written application of the manner in which the applicant is a resident of the Commonwealth under KRS 61.870(10)(a) to (f).

(b) The written application shall be:

1. Hand delivered;

2. Mailed;

3. Sent via facsimile; or

4. Sent via e-mail to the public agency's official custodian of public records or his or her designee at the e-mail address designated in the public agency's rules and regulations adopted pursuant to KRS 61.876.

(c) A public agency shall not require the use of any particular form for the submission of an open records request, but shall accept for any request the standardized form developed under KRS 61.876(4).

(3) A resident of the Commonwealth may inspect the public records:

(a) During the regular office hours of the public agency; or

(b) By receiving copies of the public records from the public agency through the mail. The public agency shall mail copies of the public records to a person whose residence or principal place of business is outside the county in which the public records are located after he or she precisely describes the public records which are readily available within the public agency. If the resident of the Commonwealth requesting the public records requests that copies of the records be mailed, the official custodian shall mail the copies upon receipt of all fees and the cost of mailing.

(4) If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records.

(5) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed five (5) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection.

(6) If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.

The Kentucky Attorney General's Open Records / Open Meetings website which includes Advisory Opinions: [Open Records/Open Meetings - Kentucky Attorney General](#)

With regard to the AG's interpretation of the "unreasonable burden" standard contained in KRS 61.872(6), I have attached a recent AG Advisory Opinion in PDF Format and links to earlier interpretations (these are just a few of decisions citing that exemption. You can find more using the search function on the upper right corner of the page.

<https://ag.ky.gov/Resources/orom/1997/97ORD088.htm>;

<https://ag.ky.gov/Resources/orom/2014/14ORD229.doc>;

<https://ag.ky.gov/Resources/orom/2007/07ORD205.doc>

<https://ag.ky.gov/Resources/orom/2019/19ORD022.doc>

There is an interesting opinion from Kentucky's Court of Appeals between a newspaper and the Kentucky State Police where KSP used this exemption and it was rejected by the AG, the Franklin Circuit Court and then the intermediate appellate court Commonwealth of Kentucky - Department of the Kentucky State Police v. Courier Journal 2019-CA-000493-MR. Please let me know if you have trouble locating this case and I will be glad to send it to you.

Thank you for the opportunity to participate in your meeting and share some information regarding Kentucky Open Records. If I can be of additional assistance, please feel free to reach out.

Sincerely,

Melanie Lowe

General Counsel

Kentucky Department of Public Advocacy