

1 AN ACT relating to personal information.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO
4 READ AS FOLLOWS:

5 *For purposes of Sections 1 to 7 of this Act, the following definitions shall apply:*

- 6 *(1) "Biometric identification information" means any record of friction ridge detail*
7 *of fingerprints, palm prints, or footprints;*
- 8 *(2) "Commercial activity" means the permissible uses set forth in the federal*
9 *Driver's Privacy Protection Act of 1994, 18 U.S.C. secs. 2721 et seq.; the Fair*
10 *Credit Reporting Act, 15 U.S.C. secs. 1681 et seq.; or the Financial Services*
11 *Modernization Act of 1999, 15 U.S.C. secs. 6801 et seq., or verification of the*
12 *accuracy of personal information received by a commercial entity in the normal*
13 *course of its business, including identification or prevention of fraud or*
14 *matching, verifying, or retrieving information. It does not include the display or*
15 *bulk sale of Social Security numbers to the public or the distribution of these*
16 *numbers to any customer that is not identifiable by the commercial entity;*
- 17 *(3) "Commercial entity" means any corporation, partnership, limited partnership,*
18 *proprietorship, sole proprietorship, firm, enterprise, franchise, or association that*
19 *performs a commercial activity in this state;*
- 20 *(4) "Government-sponsored recreation program" means a program for which an*
21 *agency assumes responsibility for a child participating in that program, including*
22 *but not limited to after-school programs, athletic programs, nature programs,*
23 *summer camps, or other recreational programs;*
- 24 *(5) "Identification and location information" means the home address, telephone*
25 *number, and date of birth of persons listed in subsection (2) of Section 2 of this*
26 *Act;*
- 27 *(6) "Public agency" means a state, county, district, authority, or municipal officer,*

1 or department, division, board, bureau, commission, or other separate unit of
2 government created or established by law;

3 (7) "Public records" means all documents, papers, letters, maps, books, tapes,
4 photographs, films, sound recordings, data processing software, or other
5 material, regardless of the physical form, characteristics, or means of
6 transmission, made or received pursuant to law or ordinance or in connection
7 with the transaction of official business by any agency;

8 (8) "Redact" means to conceal from a copy of an original public record, or to
9 conceal from an electronic image that is available for public viewing, that portion
10 of the record containing exempt or confidential information; and

11 (9) "Third-party contractor" means an individual, partnership, corporation, or
12 business entity that enters into a contract for services with a public agency and is
13 acting on behalf of a public agency.

14 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO
15 READ AS FOLLOWS:

16 (1) The following personal information related to any of the persons provided for in
17 subsection (2) of this section shall be protected from disclosure by a public
18 agency or third party contractor by Sections 1 to 7 of this Act through redaction
19 or other means. This information includes the person's:

20 (a) Home address;

21 (b) Identity of immediate family members or dependents;

22 (c) Legal name of the person's parents or legal guardian;

23 (d) Telephone numbers including home telephone numbers, personal cellular
24 telephone numbers, personal pager telephone numbers, and telephone
25 numbers associated with personal communications devices;

26 (e) Bank accounts, health savings accounts, retirement account information;

27 (f) Social Security number;

- 1 (g) Residential address information;
- 2 (h) Driver's license information unless driving is part of the job description;
- 3 (i) Day, month, and year of birth;
- 4 (j) Financial information;
- 5 (k) Insurance and medical information;
- 6 (l) Personal e-mail address;
- 7 (m) Personal photographs not publicly released by the person on social media;
- 8 (n) Public utility account information;
- 9 (o) Any publicly available information through the county clerk's office, to
10 include any permits, liens, filings;
- 11 (p) Passwords for public employees, teachers and sworn law enforcement
12 officers;
- 13 (q) Any information related to promotion, appraisal, and employee discipline
14 records;
- 15 (r) Social Security number except as provided in subsection (2) of this section.
- 16 (s) Any information the disclosure of which would constitute an unwarranted
17 invasion of personal privacy; and
- 18 (t) Any of the information in this subsection related to the immediate family or
19 household members and their emergency contact information of any of the
20 persons listed in subsection (2) of this section;
- 21 (2) Persons covered under Sections 1 to 7 of this Act shall include:
- 22 (a) Sworn public peace officers, including any officer who derives plenary or
23 special law enforcement powers from, and who is a full-time employee of,
24 the federal government, the Commonwealth, or any political subdivision,
25 agency, department, branch, or service of either, or of any municipality;
- 26 (b) Public safety officers, including any individual who is an employee of a
27 public agency and who is certified as a first responder under KRS Chapter

- 1 311A or whose employment duties include law enforcement or firefighting
2 activities;
- 3 (c) Judges including any judge elected or appointed to the Supreme Court,
4 District Court or Circuit Court or the Kentucky Labor cabinet;
- 5 (d) Personnel of the Cabinet for Health and Family Services whose duties
6 include the investigation of abuse, neglect, exploitation, fraud, theft, or
7 other criminal activities;
- 8 (e) Personnel of the Department of Health whose duties are to support the
9 investigation of child abuse or neglect;
- 10 (f) Personnel of the Department of Financial Institutions whose duties include
11 the investigation of fraud, theft, workers' compensation coverage
12 requirements and compliance, other related criminal activities, or state
13 regulatory requirement violations;
- 14 (g) Personnel of the Department of Revenue whose responsibilities include
15 revenue collection and enforcement;
- 16 (h) Current or former United States or Commonwealth attorneys, assistant
17 United States or Commonwealth attorneys, statewide prosecutors, or
18 assistant statewide prosecutors, or guardians ad litem;
- 19 (i) Corrections officers including persons employed by the Department of
20 Corrections and Bureau of Prisons, correctional and correctional probation
21 and parole officers, juvenile probation officers, and juvenile detention
22 officers; and
- 23 (j) Persons employed at emergency call centers in the state of Kentucky.
- 24 (3) Medical information pertaining to a prospective, current, or former position of a
25 person or employee listed in subsection (2) of this section which, if disclosed,
26 would identify that person or employee shall be exempt from release by a public
27 agency or third party contractor under Sections 1 to 7 of this Act. However, this

1 information may be disclosed if the person to whom the information pertains or
2 the person's legal representative provides written permission or pursuant to court
3 order.

4 (4) Personal identifying information of a dependent child of a current or former
5 officer or employee of a person listed under subsection (2) of this section of this
6 Act shall be exempt from release by a public agency or third party contractor
7 pursuant to Sections 1 to 7 of this Act.

8 (5) Medical history records and information related to health or property insurance
9 provided to a public agency or third party contractor of a person listed under
10 subsection (2) of this section shall be exempt from release. However, this
11 information may be disclosed if the person to whom the information pertains or
12 the person's legal representative provides written permission, or pursuant to
13 court order. Governmental entities or their agents shall have access to such
14 confidential and exempt records and information for the purpose of auditing
15 federal, state, or local housing programs or housing assistance programs. These
16 confidential and exempt records and information may be used in any
17 administrative or judicial proceeding, if the records are kept confidential and
18 exempt unless otherwise ordered by a court.

19 (6) Any information revealing undercover personnel of any criminal justice agency
20 operating within the state of Kentucky is exempt from release by a public agency
21 or third party contractor pursuant to Sections 1 to 7 of this Act.

22 (7) Information that would identify or locate a child, or the parent or guardian of a
23 child of any of the persons listed in subsection (2) of this section who participates
24 in a government-sponsored recreation program is exempt from release by a
25 public agency or third party contractor pursuant to Sections 1 to 7 of this Act.

26 (8) Information that would identify the name and location of a school or place of
27 employment of a spouse of a person listed in subsection (2) of this section or

1 information that would identify the name and location of a school or a daycare
2 facility attended by a dependent of a person listed in subsection (2) of this section
3 shall be exempt from release by a public agency or third party contractor
4 pursuant to Sections 1 to 7 of this Act.

5 (9) Biometric identification of any of the persons listed in subsection (2) of this
6 section is exempt from release by a public agency or third party contractor
7 pursuant to Sections 1 to 7 of this Act.

8 (10) The personal identifying information of an applicant for or a recipient of
9 paratransit services for any of the persons listed in subsection (2) of this section is
10 exempt from release by a public agency or third party contractor. This provision
11 applies to personal identifying information of an applicant for or a recipient of
12 paratransit services which is held by an agency before, on, or after the effective
13 date of Sections 1 to 7 of this Act and who is a person listed in subsection (2) of
14 this section.

15 (11) Confidential and exempt personal identifying information as provided in this
16 section may only be disclosed:

17 (a) With the express written consent of the person or recipient or the legally
18 authorized representative of the applicant or recipient;

19 (b) In a medical emergency, but only to the extent that is necessary to protect
20 the health or life of the applicant or recipient;

21 (c) By court order upon a showing of good cause; or

22 (d) To another agency in the performance of its duties and responsibilities.

23 (12) Identification and location information held by a public agency or third party
24 contractor of a person listed in subsection (2) of this section is exempt from
25 release under Sections 1 to 7 of this Act unless requested by an attorney, judge, or
26 magistrate who submits to an agency that has custody of the identification and
27 location information:

1 (a) A written request to exempt the information from public disclosure; and

2 (b) A written statement that he or she has made reasonable efforts to protect the
3 identification and location information requested from being accessible
4 through other means available to the public.

5 (13) Any information furnished by a person listed in subsection (2) of this section to a
6 public agency for the purpose of being provided with emergency notification by
7 the agency shall be exempt from release under Sections 1 to 7 of this Act.

8 (14) Identification and location information held by a public agency or third party
9 contractor of the persons listed in subsection (2) of this section shall be exempt
10 from disclosure if the covered individual submits to an agency that has custody of
11 the identification and location information:

12 (a) A written request to exempt the identification and location information
13 from public disclosure; and

14 (b) A written statement that he or she has made reasonable efforts to protect the
15 identification and location information from being accessible through other
16 means available to the public.

17 (15) Any public agency that is the custodian of the information specified in subsection
18 (1) of this section that is not the employer of the officer, employee, justice, judge,
19 or other person specified in the preceding shall maintain the exempt status of that
20 information only if the officer, employee, justice, judge, other person, or
21 employing agency of the designated employee submits a written request for
22 maintenance of the exemption to the custodial agency.

23 (16) The exemption provided in subsection (15) of this section shall apply to personal
24 identifying information held by an agency before, on, or after the effective date of
25 this Act.

26 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO
27 READ AS FOLLOWS:

- 1 (1) Notwithstanding any other provision of law, the Social Security numbers of any
2 of the persons listed in subsection (2) of Section 2 of this Act and held by an
3 employing public agency operating in the Commonwealth shall be exempt from
4 disclosure, unless:
- 5 (a) The disclosure of the Social Security number is expressly required by
6 federal or state law, or by a court order;
- 7 (b) The current or former agency employee expressly consents in writing to the
8 disclosure of his or her Social Security number;
- 9 (c) The disclosure of the Social Security number is necessary for the receiving
10 agency or governmental entity to perform its duties and responsibilities;
- 11 (d) The disclosure of the Social Security number is for the purpose of the
12 administration of health benefits for an agency employee or his or her
13 dependents;
- 14 (e) The disclosure of the Social Security number is for the purpose of the
15 administration of a pension fund administered for the agency employee's
16 retirement fund, deferred compensation plan, or defined contribution plan;
17 or
- 18 (f) The disclosure of the Social Security number is for the purpose of the
19 administration of the Uniform Commercial Code by the office of the
20 Secretary of State.
- 21 (2) A public agency shall not deny a commercial entity engaged in the performance
22 of a commercial activity access to the Social Security numbers of the persons
23 listed in subsection (2) of Section 2 of this Act provided that the Social Security
24 number will be used only in the performance of a commercial activity and
25 provided that the commercial entity makes a written request for the Social
26 Security numbers. The written request shall:
- 27 (a) Be legibly signed by an authorized officer, employee, or agent of the

- 1 commercial entity;
- 2 (b) Contain the commercial entity's name, business mailing and location
- 3 addresses, and business telephone number; and
- 4 (c) Contain a statement of the specific purposes for which it needs the Social
- 5 Security numbers and how the Social Security numbers will be used in the
- 6 performance of a commercial activity, including the identification of any
- 7 specific federal or state law that permits this use.
- 8 (3) A public agency may request any other information reasonably necessary to
- 9 verify the identity of a commercial entity requesting the Social Security numbers
- 10 of the persons listed in subsection (2) of Section 2 of this Act and the specific
- 11 purposes for which the Social Security numbers will be used.
- 12 (4) Notwithstanding any other provision of law, any person who makes a false
- 13 representation in order to obtain a Social Security number of the persons listed in
- 14 subsection (2) of Section (2) of this Act pursuant to this paragraph, or any person
- 15 who willfully and knowingly violates the provisions of this section shall be guilty
- 16 of a Class D felony.

17 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO

18 READ AS FOLLOWS:

- 19 (1) Pursuant to KRS 61.932 and Sections 1 to 7 of this Act, upon the effective date of
- 20 Sections 1 to 7 of this Act, any contract between a public agency and a third party
- 21 contractor shall include the following:
- 22 (a) A provision that requires the contractor to comply with public records laws,
- 23 specifically to keep and maintain public records required by the public
- 24 agency to perform the service; and
- 25 (b) A provision in substantially similar form identifying the contact
- 26 information of the public agency's custodian of public records in at least
- 27 fourteen (14) point boldfaced type and stating:

1 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE
2 APPLICATION OF SECTIONS 1 TO 7 OF THIS ACT TO THE
3 CONTRACTOR'S DUTY UNDER THE CONTRACT TO PROVIDE
4 PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE
5 CUSTODIAN OF PUBLIC RECORDS.

6 The contract shall also include contact information for the custodian of
7 public records, including telephone address, email address, and mailing
8 address.

9 (2) Upon request from the public agency's custodian of public records, a third party
10 contractor shall provide the public agency with a copy of the requested records or
11 allow the records to be inspected or copied within a reasonable time at a cost that
12 does not exceed the cost provided under KRS 61.874.

13 (3) A third party contractor shall ensure that public records that are exempt or
14 confidential and exempt from public records disclosure requirements pursuant to
15 Sections 1 to 7 of this Act are not disclosed except as authorized by law for the
16 duration of the contract term and following completion of the contract if the
17 contractor does not transfer the records to the public agency.

18 (4) Pursuant to KRS 61.932 and Sections 1 to 7 of this Act, a third party contractor
19 that maintains or otherwise possesses personal information shall implement,
20 maintain, and update security practices, including the following:

21 (a) Upon completion of the contract, the third-party contractor shall transfer, at
22 no cost, to the public agency all public records in possession of the third
23 party contractor or keep and maintain public records required by the public
24 agency to perform the service;

25 (b) If the third-party contractor transfers all public records to the public agency
26 upon completion of the contract, the contractor shall destroy any duplicate
27 public records that are exempt or confidential and exempt from public

1 records disclosure requirements pursuant to Sections 1 to 7 of this Act;

2 (c) If the contractor keeps and maintains public records upon completion of the
3 contract, the contractor shall meet all applicable requirements for retaining
4 public records under the law; and

5 (d) All records stored electronically shall be provided to the public agency,
6 upon request from the public agency's custodian of public records, in a
7 format that is compatible with the information technology systems of the
8 public agency.

9 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO
10 READ AS FOLLOWS:

11 (1) Notwithstanding any other provision of the law, a request to inspect or copy
12 public records relating to a public agency's contract for services shall be made
13 directly to the public agency. If the public agency does not possess the requested
14 records, the public agency shall immediately notify the contractor of the request,
15 and the third party contractor shall provide the records to the public agency or
16 allow the records to be inspected or copied within a reasonable time.

17 (2) If a third party contractor does not comply with the public agency's request for
18 records, the public agency shall enforce the contract provisions in accordance
19 with the contract.

20 (3) If a civil action is filed against a third party contractor to compel production of
21 public records relating to a public agency's contract for services, the court shall
22 assess and award against the contractor the reasonable costs of enforcement,
23 including reasonable attorney fees, if:

24 (a) The court determines that the contractor unlawfully refused to comply with
25 the public records request within a reasonable time; and

26 (b) At least eight (8) business days before filing the action, the plaintiff is
27 provided written notice of the public records request, including a statement

1 that the contractor has not complied with the request, to the public agency
 2 and to the contractor.

3 (4) Notice shall comply with subsection (3)(b) of this section if it is sent to the public
 4 agency's custodian of public records and to the contractor at the contractor's
 5 address listed on its contract with the public agency or to the contractor's
 6 registered agent. This notice shall be sent by common carrier delivery service or
 7 by registered, Global Express Guaranteed, or certified mail, with postage or
 8 shipping paid by the sender and with evidence of delivery, which may be in an
 9 electronic format.

10 (5) A contractor who complies with a public records request within eight (8) business
 11 days after the notice referenced in subsection (4) of this section shall not be liable
 12 for the reasonable costs of compliance with this section.

13 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO
 14 READ AS FOLLOWS:

15 (1) Any public officer who violates Sections 1 to 7 of this Act commits a violation,
 16 which shall be punishable by a fine not exceeding five hundred dollars (\$500) per
 17 violation.

18 (2) Any person who is a victim of a violation of this section may petition the court for
 19 an order directing compliance with Sections 1 to 7 of this Act.

20 (3) Whenever an action is filed to enforce Sections 1 to 7 of this Act, the court shall
 21 set an immediate hearing, giving the case priority over other pending cases.

22 (4) Whenever a court orders a public agency to open its records for inspection in
 23 accordance with Sections 1 to 7 of this Act, the agency shall comply with the
 24 order within forty-eight (48) hours, unless otherwise provided by the court issuing
 25 the order, or unless the appellate court issues a stay order within the forty-eight
 26 hour period.

27 (5) A stay order shall not be issued unless the court determines that there is a

1 substantial probability that opening the records for inspection will result in
2 significant damage to the complainant.

3 (6) Upon service of a complaint, counterclaim, or cross-claim in a civil action
4 brought to enforce Sections 1 to 7 of this Act, the custodian of the public record
5 that is the subject matter of such civil action shall not transfer custody, alter,
6 destroy, or otherwise dispose of the public record sought to be inspected and
7 examined, notwithstanding the applicability of an exemption or the assertion that
8 the requested record is not a public record subject to inspection and examination
9 under Sections 1 to 7 of this Act, until the court directs otherwise. The person
10 who has custody of the public record may, however, at any time permit inspection
11 of the requested record as provided under Sections 1 to 7 of this Act and other
12 provisions of the law.

13 (7) (a) If a civil action is filed against a public agency to enforce Sections 1 to 7 of
14 this Act, the court shall assess and award the reasonable costs of
15 enforcement, including reasonable attorney fees, against the responsible
16 agency if the court determines that:

17 1. The agency unlawfully refused to permit a public record to be
18 inspected or copied; and
19 2. The complainant provided written notice identifying the public record
20 request to the agency's custodian of public records at least five (5)
21 business days before filing the civil action, except as provided under
22 subsection (5) of this Act.

23 (b) A complainant shall not be required to provide written notice of the public
24 record request to the agency's custodian of public records as provided in
25 subsection (7)(a)2. of this section if the agency has not prominently posted
26 the contact information for the agency's custodian of public records in the
27 agency's primary administrative building in which public records are

1 routinely created, sent, received, maintained, and requested, and on the
2 agency's Web site, if the agency has a Web site.

3 (8) The court shall determine whether the complainant requested to inspect or copy a
4 public record or participated in the civil action for an improper purpose. If the
5 court determines that there was an improper purpose, the court may decline to
6 assess and award the reasonable costs of enforcement, including reasonable
7 attorney fees, to the complainant, and shall assess and award against the
8 complainant and to the agency the reasonable costs, including reasonable
9 attorney fees, incurred by the agency in responding to the civil action. For
10 purposes of this subsection, the term "improper purpose" means a request to
11 inspect or copy a public record or to participate in the civil action primarily to
12 cause a violation of this chapter or for a frivolous purpose.

13 (9) This section shall not be interpreted to create a private right of action authorizing
14 the award of monetary damages for a person who brings an action to enforce
15 Sections 1 to 7 of this Act. Payments by the responsible agency may include only
16 the reasonable costs of enforcement, including reasonable attorney fees, directly
17 attributable to a civil action brought to enforce this chapter.

18 (10) A complaint of misconduct filed with a public agency against an agency employee
19 related to the personal information of persons listed in subsection (2) of Section 2
20 of this Act and all information obtained pursuant to an investigation by the
21 public agency of the complaint of misconduct is confidential and exempt from
22 release under Sections 1 to 7 of this Act until the investigation ceases to be active,
23 or until the agency provides written notice to the employee who is the subject of
24 the complaint, either personally or by mail, that the agency has either:

25 (a) Concluded the investigation with a finding not to proceed with disciplinary
26 action or file charges; or

27 (b) Concluded the investigation with a finding to proceed with disciplinary

1 *action or to file charges.*

2 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO
3 READ AS FOLLOWS:

4 *Sections 1 to 7 of this Act shall apply to any information held by a public agency or*
5 *third party contractor before, on, or after the effective date of this Act.*