GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2012 REGULAR SESSION

HOUSE BILL NO. 496

TUESDAY, MARCH 13, 2012

The following bill was reported to the Senate from the House and ordered to be printed.

RECEIVED AND FILED
DATE April 4, 2012
3:13 pm
ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY Kim Perry

1 AN ACT relating to open records.

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

3 ➔Section 1. KRS 61.870 is amended to read as follows:

4 As used in KRS 61.872 to 61.884, unless the context requires otherwise:

5 (1) "Public agency" means:

6 (a) Every state or local government officer;

7 (b) Every state or local government department, division, bureau, board,

8 commission, and authority;

9 (c) Every state or local legislative board, commission, committee, and officer;

10 (d) Every county and city governing body, council, school district board, special

11 district board, and municipal corporation;

12 (e) Every state or local court or judicial agency;

13 (f) Every state or local government agency, including the policy-making board of

14 an institution of education, created by or pursuant to state or local statute,

15 executive order, ordinance, resolution, or other legislative act;

16 (g) Any body created by state or local authority in any branch of government;

17 (h) Any body which***, within any fiscal year,*** derives at least twenty-five percent

18 (25%) of its funds expended by it in the Commonwealth of Kentucky from

19 state or local authority funds***. However, any funds derived from a state or***

20 ***local authority in compensation for goods or services that are provided by a***

21 ***contract obtained through a public competitive procurement process shall***

22 ***not be included in the determination of whether a body is a public agency***

23 ***under this subsection***;

24 (i) Any entity where the majority of its governing body is appointed by a public

25 agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of

26 this subsection; by a member or employee of such a public agency; or by any

27 combination thereof;

1 (j) Any board, commission, committee, subcommittee, ad hoc committee,
2 advisory committee, council, or agency, except for a committee of a hospital
3 medical staff, established, created, and controlled by a public agency as
4 defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this
5 subsection; and
6 (k) Any interagency body of two (2) or more public agencies where each public
7 agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of
8 this subsection;
9 (2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs,
10 diskettes, recordings, software, or other documentation regardless of physical form
11 or characteristics, which are prepared, owned, used, in the possession of or retained
12 by a public agency. "Public record" shall not include any records owned or
13 maintained by or for a body referred to in subsection (1)(h) of this section that are
14 not related to functions, activities, programs, or operations funded by state or local
15 authority;
16 (3) (a) "Software" means the program code which makes a computer system
17 function, but does not include that portion of the program code which contains
18 public records exempted from inspection as provided by KRS 61.878 or
19 specific addresses of files, passwords, access codes, user identifications, or
20 any other mechanism for controlling the security or restricting access to public
21 records in the public agency's computer system.
22 (b) "Software" consists of the operating system, application programs,
23 procedures, routines, and subroutines such as translators and utility programs,
24 but does not include that material which is prohibited from disclosure or
25 copying by a license agreement between a public agency and an outside entity
26 which supplied the material to the agency;
27 (4) (a) "Commercial purpose" means the direct or indirect use of any part of a public

1 record or records, in any form, for sale, resale, solicitation, rent, or lease of a
2 service, or any use by which the user expects a profit either through
3 commission, salary, or fee.
4 (b) "Commercial purpose" shall not include:
5 1. Publication or related use of a public record by a newspaper or
6 periodical;
7 2. Use of a public record by a radio or television station in its news or other
8 informational programs; or
9 3. Use of a public record in the preparation for prosecution or defense of
10 litigation, or claims settlement by the parties to such action, or the
11 attorneys representing the parties;
12 (5) "Official custodian" means the chief administrative officer or any other officer or
13 employee of a public agency who is responsible for the maintenance, care and
14 keeping of public records, regardless of whether such records are in his actual
15 personal custody and control;
16 (6) "Custodian" means the official custodian or any authorized person having personal
17 custody and control of public records;
18 (7) "Media" means the physical material in or on which records may be stored or
19 represented, and which may include, but is not limited to paper, microform, disks,
20 diskettes, optical disks, magnetic tapes, and cards; and
21 (8) "Mechanical processing" means any operation or other procedure which is
22 transacted on a machine, and which may include, but is not limited to a copier,
23 computer, recorder or tape processor, or other automated device.

Speaker-House of Representatives

President of Senate

Attest: Chief Clerk of House of Representatives

Approved Governor

Date 4-4-12