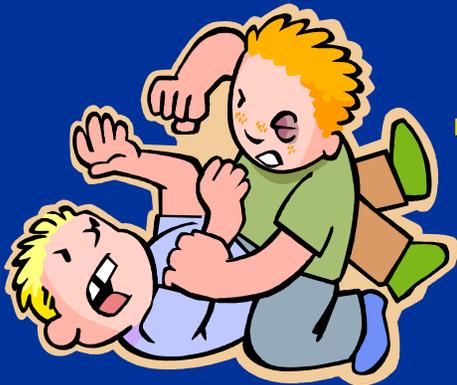


THE KENTUCKY OPEN MEETINGS ACT &

THE OPEN RECORDS ACT

- The basic policy of the Open Meetings Act & the Open Records Act is that free and open observation of public meetings and the open examination of public records is in the public interest. Exceptions provided for by law shall be strictly construed,
 - even though such observation & examination may cause inconvenience or embarrassment to public officials or others.
 - (KRS 61.805 TO 61.850) (KRS 61.872 TO 61.884)



THE KENTUCKY OPEN MEETINGS ACT

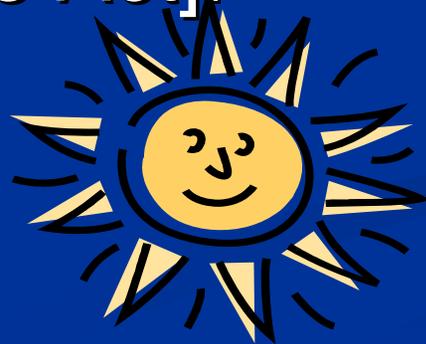
The basic policy of KRS 61.805 to
61.850

is that the formation of
public policy is public business and
shall not be conducted in secret.



MANDATE OF THE OPEN MEETINGS ACT

- ***ALL MEETINGS*** of a quorum of the members of any ***PUBLIC AGENCY*** at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times [except as otherwise provided in the Act].



PUBLIC MEETING

- “*ALL GATHERINGS OF EVERY KIND*, including video teleconferences, regardless of where the meeting is held, and whether regular or special and informational or casual gatherings held in anticipation of or in conjunction with a regular or special meeting.”

- KRS 61.805(1)



SERIAL MEETINGS

KRS 61.810(2)

- “Public business is the discussion of the various alternatives to a given issue about which the agency has the option to take action.”
- A SERIES of meetings with less than a quorum of members attending each; but,
- COLLECTIVELY CONSTITUTE at least a quorum.



REGULAR MEETINGS REQUIREMENTS

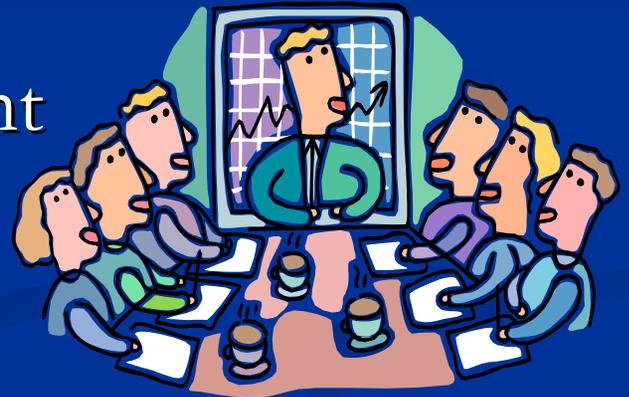


- Time and Place of Meetings
- Schedule Annually
- Minutes of Meetings
- Public Attendance at Meetings
- News Media Coverage



SPECIAL MEETINGS REQUIREMENTS

- Who May Call – Presiding Officer or Majority of Members
- Notice Requirements – Content
- Notice Requirements – Delivery and Posting
- Emergency Situations – Exception to Notice Requirements



CLOSED SESSIONS

KRS 61.810



- **Public agencies may close:**

That portion of a meeting to discuss a topic specifically exempted from disclosure, such as:

- REAL PROPERTY (KRS 61.810(1)(B))
- LITIGATION (KRS 61.810(1)(c))
- APPOINTMENT, DISCIPLINE, DISMISSAL (KRS 61.810(f))
- HOMELAND SECURITY (KRS 61.810(1)(m))

CLOSED SESSIONS REQUIREMENTS



- NOTICE- in open (be specific)
- MOTION- in open- (be specific)
- MINUTES- don't take (but private notes ok)
- NO FINAL ACTION –return to open first
- MATTERS DISCUSSED –be careful



VIOLATIONS OF THE OPEN MEETINGS ACT



- A private meeting of a quorum where public business is discussed *or* action is taken (KRS 61.810(1))
- Series of less than quorum meetings collectively constituting a quorum (KRS 61.810(2))
- Failure to adopt a schedule of regular meetings (KRS 61.820)
- Inadequate notice of special meetings (KRS 61.823)



BE CAREFUL NOT TO...

- Deviate from agenda for special meetings (KRS 61.823(3))
- Fail to observe formalities for closed session (KRS 61.815(a)-(d))
- Discuss improper topic in closed session (KRS 61.810(1)(a)-(m) and (KRS 61.815(1)(d))
- Take final action in closed session (KRS 61.815(1)(c))



Conduct meetings at inconvenient times or places
(*KRS 61.820*)

Fail to properly record minutes or make available no
later than immediately following the next meeting of
the agency (*KRS 61.835*)

Condition attendance

- * mandate identification
 - * prohibit recording meeting
 - * meeting room inadequate
- (*KRS 61.840*)

Fail to respond to an open meetings complaint (*KRS*
61.846(1))

ENFORCEMENT

(KRS 61.846)

- Complaint- (if violation alleged)



Must be:

*Written

*Directed to Agency's presiding officer

*State the circumstances constituting a violation

*Propose remedial action



AGENCY RESPONSE

- Written- by presiding officer or designee
- Within three (3) business days
- If admit violation & remedy -say so
- If deny violation- state why (be specific)



IF COMPLAINT NOT RESOLVED

Complaining Party:

Appeal - Attorney General

- within sixty (60) days of written denial of complaint or no response
- send copy of complaint and denial
- written statement of how agency failed to remedy

Attorney General

- can request additional documentation
- issues written opinion decision within 10 days



IF COMPLAINT STILL NOT RESOLVED

Either party, can:

Appeal the Attorney General's Opinion

-within Thirty(30) Days

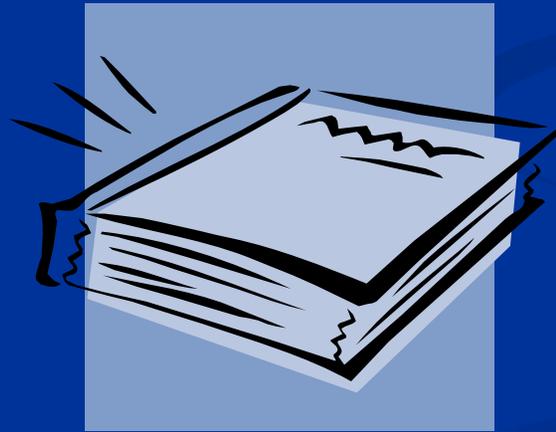
- to Circuit Court

-where agency has principal place of
business

-or where violation occurred.



THE END

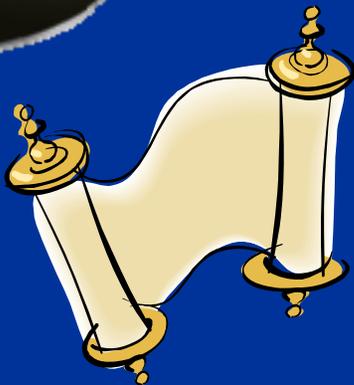


THE OPEN RECORDS ACT

KRS 61.870 – 884

(Commonly Known As “THE SUNSHINE LAW”)

PREAMBLE TO THE OPEN RECORDS ACT





- Government is the servant of the people
- Access to people's business is a fundamental and necessary right of every citizen in the Commonwealth of Kentucky.



- All Public Records shall be open for inspection:
- WHO can request a public record?
ANYONE,
- WHY does someone want to review or copy a public record?

Does not matter and is legally irrelevant to the agency's obligation to provide it!

PUBLIC RECORDS

“all means all”



- All books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation
- regardless of physical form or characteristics
- prepared, owned, used, in the possession of or retained by a public agency. KRS 61.870(2)

GENERAL REQUIREMENTS



- Suitable Facilities
- Time for Inspection-



during regular business hours

- Official Custodian-in charge of records
-there must be one



- Generally requester can be required to review documents before copying or mailing

PROCEDURES

■ REQUEST TO INSPECT RECORDS

- Written Application
- Directed to Official Custodian
- Signed by Requestor and with name printed legibly
- Describing Records



PROCEDURES



■ RESPONSE TO REQUEST

MUST BE IN WRITING

- Within **three (3) business days**-a must
- If request will be honored, a statement that Agency will comply
- If there will be a delay- explain why
- If request is denied, cite specific statutory exception and brief explanation of why it applies
- Issued by Official Custodian, or under his\her authority



COPYING CHARGES



- **Nonexempt Records Used for Non-commercial Purpose**
 - Actual cost including medium and mechanical processing
 - \$.10 a page (if more, be ready to prove)
 - Not including staff costs



UNREASONABLE BURDEN

(KRS 61.872(6))



- What is considered UNREASONABLE?
- Who decides?
- Can public agency refuse if meeting the request will be-
- Disruptive? Repetitive? Time consuming?

Refusal under this section shall be sustained by clear and convincing evidence. (hard to accomplish)

PUBLIC RECORDS EXCEPTED FROM INSPECTION



- Contain information of a personal nature (KRS 61.878(1)(a))
- Records involving an administrative adjudication, while ongoing. Once completed, exception gone (KRS 61.878(1)(h))
- preliminary drafts, notes, correspondence with private individuals (KRS 61.878(1)(i))
- preliminary recommendations, and preliminary memoranda... (KRS 61.878(1)(j))
- public records or information made confidential by enactment of the General Assembly (KRS 61.878(1)(l))

HOMELAND SECURITY EXEMPTION

KRS 61.878(m)

- * Reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:
- * Infrastructure records that expose location, configuration, or security of critical systems, including public utilities;
- * Detailed drawings, schematics, maps or specifications of structural elements...floor plans...of
- * Any building or facility owned, occupied, leased, or maintained by a public agency;

WHAT IS A TERRORIST ACT

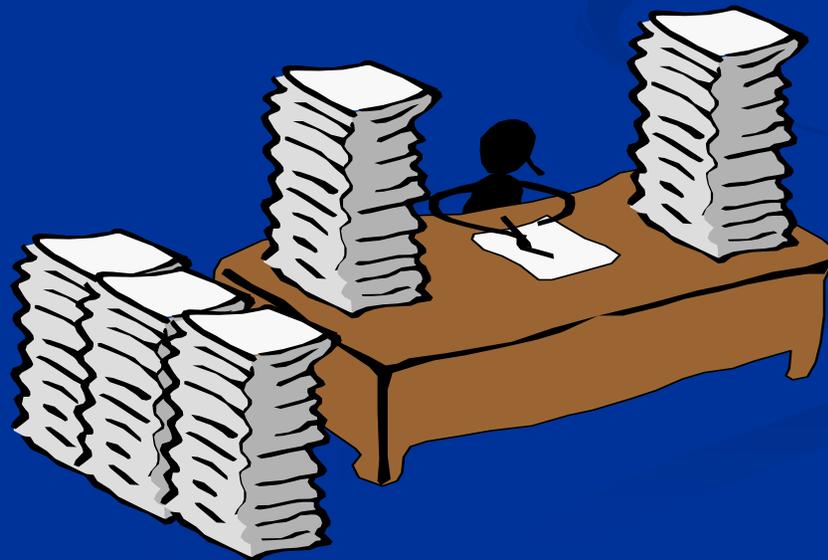
- Criminal Act intended to:
 - Intimidate or coerce a public agency ...;
 - Disrupt a system including but not limited to electrical, fire suppression, water, wastewater, sewage, and gas systems;
 - Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency;



KRS 61.878(4)

Duty to Redact

- If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the non-excepted material available for examination



ROLE OF THE ATTORNEY GENERAL

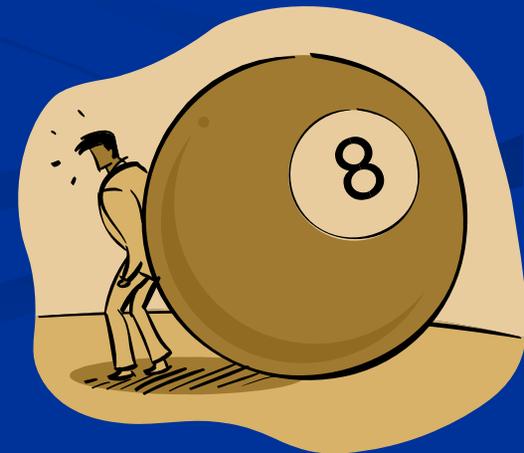


- Appeal to Attorney General/Circuit Court
- Notification
- Request for Additional Documentation/Disputed Documents
- Burden of Proof
- Decision Stating Whether Agency Violated Open Records Act
- Appeal of Attorney General's Decision within Thirty Days

TROUBLESHOOTING

- RE-EXAMINATION OF EXISTING POLICIES:
 - DESIGNATION OF CUSTODIAN OF RECORD
 - REVIEW RULES AND REGULATIONS
 - OPEN RECORDS POLICY-HAVE ONE!

- PROCEDURAL AND SUBSTANTIVE COMPLIANCE
 - TIMELINESS- RESPOND *****WITHIN 3 DAYS*****
 - CONTENT-ID ANY DOCUMENT WITHHELD & STATE STATUTORY EXCEPTION RELIED ON
 - PARTICULARIZED & DETAILED RESPONSES



THE END

