

ORDER NO. 1, 2013 SERIES

**AN ORDER ADOPTING THE POLICY GOVERNING THE INSPECTION OF THE PUBLIC RECORDS OF THE CITY OF FRANKFORT**

WHEREAS, the City of Frankfort, in Section 34.01 of the Code of Ordinances, adopted by ordinance Kentucky's Open Records law, KRS 61.870 to 61.884; and,

WHEREAS, the City of Frankfort receives numerous requests seeking to obtain copies of the public records of the City of Frankfort, and wishes to adopt a policy governing the inspection of the City's public records to facilitate the review and release of these records.

**NOW THEREFORE, IT IS HEREBY ORDERED BY THE BOARD OF COMMISSIONERS OF THE CITY OF FRANKFORT, KENTUCKY:**

That Attachment A to this Order sets forth the Open Records Policy of the City of Frankfort and Attachment B is a summary of this Open Records Policy.

Adopted on the 25<sup>th</sup> day of November, 2013.

  
\_\_\_\_\_  
Mayor

Attest:  
  
\_\_\_\_\_  
City Clerk

## SUMMARY

### POLICY GOVERNING INSPECTION OF THE PUBLIC RECORDS OF THE CITY OF FRANKFORT

Pursuant to KRS 61.870 to 61.884, the public is notified that, as provided herein, the public records of the City of Frankfort are open for inspection by any person on written application to the Frankfort City Clerk, whose address is City of Frankfort, 315 West Second Street, Frankfort, Kentucky 40601, from 8:00 a.m. to 4:30 p.m. Monday through Friday, each week, except holidays. Application forms for inspection of the public records of this agency will be furnished on request to any person by an employee in this office. Assistance in completing the application form will be provided by an employee on request.

Applicants for the inspection of public records shall be advised of the availability of the records requested for inspection, and shall be notified in writing not later than three (3) working days after receipt of an application for inspection of any reason the records requested are not available for public inspection.

Copies of written materials in the public records of this agency shall be furnished to any person requesting them on payment of a fee of ten (10) cents a page; copies of nonwritten records (photographs, maps, materials stored in computer files or libraries, etc.) shall be furnished on request, on payment of a charge equal to the actual cost of producing copies of such records by the most economic process not likely to damage or alter the record.

Refer to policy

  
WILLIAM I. MAY, JR, MAYOR  
CITY OF FRANKFORT

OPEN RECORDS POLICY  
CITY OF FRANKFORT

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 citizen'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. The City Clerk is the Custodian of Records for the City of Frankfort. Accordingly, the City Clerk will be the individual responsible for reviewing and responding to requests to review records that are received by the City, with assistance from department personnel and the City Solicitor where necessary. *Any open records request received by the City should immediately be delivered to the City Clerk.*
4. The City Clerk is to keep a log of the open records requests received by the City. The log should 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 should be maintained in numerical order by log number. This makes reference fairly easy when multiple requestors request the same documents. Logs should be retained for five (5) years pursuant to the records retention policy. Open records requests and responsive correspondence should be retained for one (1) year.
5. 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 City records which should be made available upon any request.

6. If the City Clerk is certain that a document is open for inspection or can verify its status quickly, the City Clerk can release the document on request without requiring a written open records request. Oral requests are not formal open records request under the law. 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.

Do not allow a requester to review the document and then require a written request be filed in order to get a copy.

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 City charges for copies are as follows:
  - A. Photocopies – 10 cents per page.
  - B. Oversize copies – the actual cost.
  - C. Photographs - the actual cost.
  - D. Video or audiotape cassettes – the actual cost of the tape or \$1.00 per disc
  - E. Computer disc transfer – the actual cost of the disc or \$1.00 per disc
  - F. Mailed copies – 10 cents per page plus postage (no administrative costs).

## II. OPEN RECORDS REQUEST PROCEDURE

1. Open records requests will be accepted in written form by mail carrier, fax or hand-delivery. No email requests without the signature (non-electronic) of the requestor(s) are allowed. Application forms for inspection of public records will be furnished on request by the City Clerk or the City Clerk's designee. Assistance in completing the form will be provided upon request.
2. Responses to written requests must be in writing and sent by mail or fax within three business days pursuant to KRS 61.880(1). Responses may be provided by email at the discretion of the City Clerk. 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. If your department receives an open records request, please immediately forward the request to the City Clerk. The response time begins when the City Clerk receives the request. The City Clerk must respond within three days of the initial receipt of the request.

4. If the records requested are voluminous or are stored in storage, 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. I will update you by letter in 5 – 7 business days (or other appropriate time) as to the status of your request. At that time, all nonexempt documents will be made available for your inspection.” After the initial letter, a follow-up letter must be sent within 5 – 7 business days as promised. Continue to follow-up in 5-7 business days until the request is completed. 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.
5. If at all possible, original documents are to be made available for inspection during regular business hours at the City Clerk’s office. No person shall remove original copies of public records from the City offices, nor shall any person damage, disorganize, alter, deface, or change the public record. Documents may be faxed or emailed to requestors at the discretion of the City Clerk. It is not a proper response to solely refer a requestor to a website. Hard copies must be provided to the requestor during the regular business hours at the City 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 City office and are not to leave the office.
6. 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.
7. The requested records should be kept available for inspection for thirty days from the date of the final response sent by the City Clerk. 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.
8. KRS 61.872(3)(a) provides that persons who live in Franklin 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 Franklin County, the response describing the available documents should state, pursuant to 61.878(3)(b), “Since you live outside of Franklin County, you are entitled to receive your documents by mail upon the City’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 Franklin 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.

9. 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 to the requestor 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.
10. 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).
11. 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 City Solicitor.
12. All requests are to be answered by the City Clerk. Any questions may be addressed by the City Clerk to the City Solicitor.
13. If the City Clerk receives an open records request from the media, forward a copy of the request and your response to the City Solicitor and the City Manager. If any questions arise, contact the City Clerk or City Solicitor.
14. If you receive an open records request in which the City is a party to litigation, forward it to the City Clerk or City Solicitor immediately.
15. If an exemption is used to deny the inspection of certain documents, the specific statutory exception should be cited in the response and a brief explanation of how the exception applies to the record withheld should be given. An example is, if social security numbers and home addresses are redacted from a record, the 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."

16. 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 specifically 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 City 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.
17. 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 (for example - time spent creating the program X \$50.00 per hour). The requestor must send in payment before the program is written. The City does 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 City. The "computer program" is a specific program that must be written by a computer analyst employed by the City.
18. Requestors often request documents which the City possesses 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 code violations on properties owned by Mr. X. The Division of Code Enforcement indexes their records by address and not by name of the property owner. A proper response to the requestor would be, "The records are not indexed in the manner in which you requested them," and inform the requestor how the records are indexed.
19. The Attorney General has stated that as a precondition to inspection, a requesting party must identify with reasonable particularity those documents which he wishes to review. 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: "To attempt to compile information in response to your general request, which did not identify with reasonable particularity documents you wish to review, would require

innumerable employee-hours. 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 315 East Second Street, Frankfort, Kentucky,” or “all documents regarding Mr. X.”

20. Sometimes requestors will submit requests which contain an overly broad request, but do describe some documents with reasonable particularity. An example would be “all documents regarding 315 East Second 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 nuisance liens”, and that “the rest of their request cannot be processed until they describe with reasonable particularity documents they wish to review.”
21. Where appropriate, 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.
22. E-mail – As more and more employees use electronic mail, 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.
24. If the City Clerk has reason to believe that repeated requests are intended to disrupt other essential functions of the City, after consultation with the city Manager and the City Solicitor, the request the record to review may be denied.

### III. OPEN RECORDS EXEMPTIONS

1. 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 should not be made available for inspection.
  - a. 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.

b. KRS 61.878(1)(c)(1): 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.

c. KRS 61.878(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.

d. 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.

e. 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.

f. 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.

g. 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.

h. 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 affect 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.

i. 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).

j. 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.

k. KRS 61.878(1)(m): Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act. This is one of the more complicated exemptions, so please review this statute carefully when you believe it may apply to a request.

l. 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.

m. 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.

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

#### IV. AMENDMENTS

Subject to the conditions of the Open Records Act, these rules may be amended, supplemented, revised, changed and/or repealed, in whole or in part, at any time and shall be effective immediately when made and thereafter reduced to written form and posted with these rules as soon as reasonably possible.