

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

ELECTRONIC APPLICATION OF ROWAN WATER,)	CASE NO.
INC. FOR APPROVAL OF WATER TRAINING)	2024-00103

SUPPLEMENTAL FILING

Come now Rowan Water, Inc., its individual directors and its general manager (collectively, “Rowan Water”), and Honaker Law Office, PLLC (collectively, “Joint Applicants”) to supplement its Response to Commission Staff’s First Request for Information filed on May 21, 2024, and Amended Application for an Order from the Kentucky Public Service Commission (“Commission”) accrediting and approving a proposed water utility training program for continuing education credit pursuant to KRS 74.020 (6) and (7) and 807 KAR 5:070, filed on May 9, 2024. Applicants just received a presentation and would like to supplement the record with the presentation from the Commonwealth of Kentucky Office of Attorney General, Assistant Attorney General Zachary Zimmerer. The presentation and biography of the presenter is attached as Exhibit 1 and will be an hour in length. The presentation will be added to the agenda on Day 1, August 20, 2024. If the Commission approves the presentation for continuing education credit, the Applicants will adjust the agenda times to accommodate the presentation from the Attorney General’s Office on Open Records and Open Meetings Law. Applicants will file the final agenda with the affidavit of presentation to provide the Commission with the final agenda and presentations to confirm compliance with the submitted materials. Applicants have requested additional hours in order to have alternatives, should the Commission not approve any of the presentations or if a presenter is unable to participate.

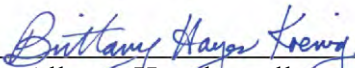
Open Records and Open Meetings, the Assistant Attorney General will present to the Directors and Commissioners of the attending water utilities on the requirements to comply with current open records and open meetings law in Kentucky.

The Joint Applicants request that the attachment at Exhibit 1 supplement the Amended Application filed on May 9, 2024, and the materials filed on May 21, 2024.

WHEREFORE, the Joint Applicants request that the Supplemental Filing be filed into the record for the Public Service Commission to consider with the other presentations to approve and accredit the proposed training program entitled, “**Rowan Water Summer Training**” for water utility management training and should the Commission deem a program or presenter insufficient, Joint Applicants request that individual or single presentation be denied and not the entire training program.

Dated this 28th day of May, 2024.

Respectfully submitted,

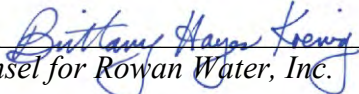


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CERTIFICATE OF SERVICE

This is to certify that foregoing was submitted electronically to the Commission on May 28, 2024 and that there are no parties that have been excused from electronic filing. Pursuant to prior Commission orders, no paper copies of this filing will be submitted.



Counsel for Rowan Water, Inc.

Exhibit 1

Biography for Open Records Open Meetings Presentation:

Zachary M. Zimmerer

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Zachary joined the Kentucky Attorney General's Office of Civil and Environmental Law as an Assistant Attorney General in October 2022. He currently serves as the Director of the Open Records and Open Meetings Appeals Division. Zachary graduated from Western Kentucky University and Indiana University Maurer School of Law.

OPEN RECORDS & OPEN MEETINGS LAW

Zachary Zimmerer
Assistant Attorney General

Office of the
Kentucky Attorney General
502-696-5478

DISCLAIMER

This presentation is for informational and training purposes only, is general in nature, and is not intended to provide, and should not be relied upon or construed as, a legal opinion or legal advice regarding any specific issue or factual circumstance.

OPEN RECORDS & OPEN MEETINGS LAW

“A Guide for the Public and Public Agencies”

Publication available on OAG's
website:

<https://ag.ky.gov/AG%20Publications/2021%20Open%20Records%20Open%20Meetings%20Guide.pdf>

(If you remember nothing else,
remember that there is a
pamphlet on the AG's web page.)

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Open Records Law

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What is the Open Records Act and what does it do?

- Kentucky Law establishes a right of access to public records.
- In 1976, the General Assembly passed KRS 61.870 to KRS 61.884.
- Provides for the free and open examination of public records.
- Identifies a relationship between records retention/management and public access.
- Makes nonexempt records available to the public.
- Requires providing suitable facilities for the inspection of records.

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What are Public Records?

- Public Records are “all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics.” KRS 61.870(2).
- Any of those types of records that are “prepared, owned, used, in possession of or retained by a public agency.” KRS 61.870(2).
- Emails, databases, and other electronic records are included.
- Records not maintained on agency’s premises are included.

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Who may request Public Records?

- Anyone who is a resident of the Commonwealth. KRS 61.870(10).
- Residents of the Commonwealth include:
 - (a) An individual residing in the Commonwealth;
 - (b) A domestic business entity with a location in the Commonwealth;
 - (c) A foreign business entity registered with the Secretary of State;
 - (d) An individual that is employed and works at a location or locations within the Commonwealth;
 - (e) An individual or business entity that owns real property within the Commonwealth;
 - (f) Any individual or business entity that has been authorized to act on behalf of an individual or business entity defined in paragraphs (a) to (e) of this subsection; or
 - (g) A news-gathering organization as defined in KRS 189.635(8)(b) I.a. to e.

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News-Gathering Organizations

- “News-gathering organization” is defined in KRS 189.635(8)(a) and include:
 - Newspapers and periodicals
 - Television or radio stations with valid broadcast licenses from the FCC
 - A news organization that broadcasts over a multichannel video programming service as defined in KRS 136.602
 - A Web site published by or affiliated with the three prior entities
 - An online-only newspaper or magazine that publishes news or opinion of interest to a general audience
 - Any other entity that publishes news content by any means to the general public or to members of a particular profession or occupational group

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What is a “Public Agency” for Open Records Purposes?

- Only “public agencies” as defined in KRS 61.870(1) are controlled by the Open Records Act. These include:
- State and local government officers, departments, and legislative bodies;
- County and city governing bodies, school district boards, special district boards, and municipal corporations;
- State or local government agencies created by statute or other executive and legislative acts;
- Bodies created by state or local authority in any branch of government;
- Bodies that receive at least 25% of their funds from state or local authority, within any fiscal year, excluding funds derived from a state or local authority in compensation for goods or services that are provided by a contract obtained by a public procurement process;
- An entity where the majority of its governing body is appointed by a public agency;
- Agencies created and controlled by public agencies; and
- Interagency bodies of two or more public agencies.

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General Requirements of the Open Records Act

Suitable
Facilities

Time for
Inspection

Official
Custodian

Adopted
Rules and
Regulations

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Suitable Facilities

- Must provide those who wish to inspect documents with a space to do so. KRS 61.872(1).
- No fees may be imposed for a requester who only inspects public records and makes no copies.

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Time for Inspection

- Each public agency must permit inspection of nonexempt public records during the agency’s regular office hours. KRS 61.872(3)(a).
 - Requester must simply “describe” the public records when requesting to inspect records in-person.
- Agencies must, upon request, mail copies to a person whose residence or principal place of business is outside the county in which the records are located. KRS 61.872(3)(b).
 - Requester must “precisely describe” the requested records and the records must be readily available when requesting copies by mail.

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Official Custodian

- Agencies must appoint an official custodian of the agency's records.
- This person is "responsible for the maintenance, care, and keeping of the agency's records, regardless of whether the records are in his or her actual personal custody and control." KRS 61.870(5).

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Rules and Regulation

- Each public agency must adopt rules and regulations in conformity with the requirements of the Open Records Act. KRS 61.876.
- The rules must conform to the requirements of the Act and be displayed by the agency in a prominent location that is accessible to the public. KRS 61.876(2).
- Effective June 29, 2021, each public agency must make its rules and regulations available on its website.
- The rules and regulations shall include:
 - the principal office of the public agency and its regular office hours;
 - the title, mailing address, and email address of the official custodian of records;
 - the fees charged for copies;
 - the procedures to be followed in requesting public records.

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What is a Request?

Request for information: "How much are the city's employees paid?"

- An agency is not required to provide information in response to a request for information.
- An agency is not required to compile info or create a record that does not already exist in response to an open records request.

Request for record: "Please produce copies of the city's payroll records for May."

- This is a proper record request.
- Unless this record is exempt, this request must be honored.

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Requests for alternate format

- What does this mean?
 - A format other than the format in which the record is maintained.
 - "Maintain" means any format that a database is capable of producing responsive records. For example, if an agency's database has the ability to export records in Microsoft Excel, and the requester asks for the records in that format, the agency must supply the records in the requested format.
 - A request to tailor the format to meet the parameters of the request. For example, if a requester seeks a transcript of a hearing or meeting, and the agency possesses an audio or video recording of the hearing or meeting, an agency is not required to transcribe the audio recording into a written document.
- The agency may provide the requested form, but it is not required to do so.
- The agency can recover certain costs from the requester.
 - Staff costs.
 - Actual costs of format change.

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Other things you should know

If a requester wants to inspect the records on-site, he or she must be allowed to do so, even if the public agency prefers to honor the request by other means.

On-site inspections must be allowed during regular office hours and no other restrictions on hours of access may be imposed.

Absence of the custodian does not extend agency response time. If the custodian will be absent for more than a few days, then the agency should designate an acting custodian to act during the regular custodian's absence.

Redacting information is not creating a record. The agency is required to bear the costs and separate exempt and non-exempt information and provide non-exempt information to the requester. KRS 61.878(4). Agencies should be mindful of their duty to redact when procuring records management software or similar tools.

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Procedure for inspecting public record

Request to inspect records.

- Made to the official custodian.
- Custodian may require request be
 - in writing,
 - signed by the requester,
 - name printed legibly on it,
 - describing the records to be inspected.
 - The request may be **hand-delivered, mailed, emailed, or sent via facsimile** to the agency.
- Email Requests
 - Effective June 29, 2021, each public agency must accept a request submitted via email to the records custodian at the email address provided in the agency's rules and regulations
- Effective June 29, 2021, only residents may request to inspect public records. A request must include a statement by the requester as to how he or she qualifies as a resident under KRS 61.870(10). A record custodian may deny a request that does not include a statement affirming residency.

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Open Records Request Form

- The Attorney General has promulgated a standardized open records request form.
- This form is available at the Attorney General's website.
- Effective June 29, 2021, all public agencies must publish a link to this form on their websites.
- Requesters are not required to use this form, but a public agency must accept requests that are submitted to it on this form.

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Procedure for inspecting public record

Agency Response

- Public agency (custodian) **must** respond
 - In writing
 - Within five business days
 - Day of receipt is "Day Zero" because it does not count towards the five business day deadline
 - Keep copy of request & response.
- Although a record custodian may call the requester to get more information about the records being requested, a response must be issued in writing within five business days. "But I called him" is not a defense to a requester's claim that he did not receive a response from the public agency.

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Procedure for inspecting public record

Application to Wrong Agency or Person

- Wrong Agency – If your public agency is not the custodian of records requested (i.e., a request to the fiscal court for the meeting minutes of the local school board), the records custodian must respond to the request within five business days and provide the requester with the contact information of the records custodian of the proper agency.
- Wrong Person – If a request is sent to any employee within the agency, that employee must forward the request to the Custodian. The five-day clock is still running from the date the first employee received the request.

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Procedure for inspecting public record

Record Not Available

- Record is not available when:
 - In active use.
 - In storage.
 - Or not otherwise available.
- Agency **must** notify the requester.
 - Invoke KRS 61.872(5) in writing.
 - Within five business days after receipt of request, and
 - Indicate a place, time, and date for inspection not to exceed five days from receipt of the request.
- If the record cannot be produced within five days, then the public agency:
 - **Must** notify the requester in writing.
 - Provide a detailed explanation for the delay.
 - State the earliest date the record will be available.

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Procedure for inspecting public record

Unreasonably Burdensome Request

- The agency may refuse inspection or copies;
 - If the request places an **unreasonable burden** on the agency in producing records; or
 - If the custodian believes that repeated requests are **intended to disrupt the agency's essential functions**.
 - Agency must support such a refusal with **clear and convincing evidence**.

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Procedure for inspecting public record

Copies of Records

- Requester has right to obtain copies of all nonexempt records.
- A public agency may require prepayment of a reasonable fee. Must not exceed actual cost of copying the record.
 - Cannot include staff costs.
 - 10¢ per page is the max fee allowed unless a statute allows a greater fee or actual costs of the agency exceed 10¢.
 - A public agency may only charge the actual cost of physical media, such as CDs or flashdrives, when providing records on those mediums. For example, if a package of 20 blank CDs costs \$20.00, a public agency may charge \$1.00 per CD.
 - A public agency's fee must be established in its rules and regulations.
- A public agency is only required to provide copies in the format in which the records are maintained. A public agency is not required to tailor the records in a format requested by the requester.

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Procedure for inspecting public record

Commercial Use

- Commercial use is “any use by which the user expects a profit either through commission, salary, or fee,” but does not include:
 - Use by print or electronic media organizations or
 - Attorneys representing parties in litigation.
- A higher copying fee may be used for requests made for a commercial purpose.
 - That fee can incorporate staff costs, which normally are not allowed.
- An agency may require the requester to certify whether records will be used for commercial purpose prior to production.

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Procedure for inspecting public record

Online Access

- A public agency may provide online access to public records in electronic format.
- But the public agency may not simply direct the requester to its website to inspect records.
- The agency may require that the requester enter into a contract, license, or other agreement with the agency, and may charge fees. KRS 61.874(6).
- Fees cannot exceed:
 - The cost of physical connection to the system and
 - The reasonable cost of computer time access charges.

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Commonly Cited Exemptions

KRS 61.878(1)(a)-public records containing information of a personal nature the public disclosure of which would constitute a clearly unwarranted invasion of personal privacy

- Ex. - SSN, personal phone number, personal address, bank account numbers, date of birth

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Commonly Cited Exemptions

KRS 61.878(1)(i)-preliminary drafts, notes and correspondence with private individuals and preliminary recommendations

KRS 61.878(1)(j)- preliminary memoranda in which opinions are expressed or policies formulated or recommended

KRS 61.878(1)(k) and (l)-records made confidential by federal or state law

For full list, consult KRS 61.878(1) or pages 12-13 of the guidance document.

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New Exemptions

KRS 61.878(1)(p)-client and case files maintained by the Department of Public Advocacy or any person or entity contracting with the Department of Public Advocacy for the provision of legal representation under KRS Chapter 31.

KRS 61.878(1)(r)- Photographs or videos that depict the death, killing, rape, or sexual assault of a person. However, a public agency must allow in-person inspection of such records when requested by specifically identified individuals.

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Other info regarding exemptions

- A denial must cite the exemption that allows the denial.
- An agency may release records covered by exemption if it so chooses. Use of the exemptions is discretionary, not mandatory.
- A public agency employee is entitled to inspect any record that relates to him, even if exempt, as long as it is not part of an ongoing criminal or admin investigation or been made confidential by federal or state law. KRS 61.878(3).
- Agencies are encouraged to share exempt documents when they serve a "legitimate governmental need." KRS 61.878(5).
- When a record contains exempt and nonexempt information, it must be shared with exempt information redacted.

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Open Records Appeals

- Requester may appeal agency response to Attorney General or to Circuit Court.
 - Each agency has the burden of justifying its actions, including that a record was properly denied pursuant to an exemption, or a delay in access was reasonable under the facts of the case.
- Either party may appeal Attorney General's decision to Circuit Court.
 - Parties have thirty days to appeal AG decision.
 - Failure to appeal a decision within 30 days makes the decision final and enforceable by order of the Circuit Court.
- The Attorney General cannot assess fines or otherwise enforce its decision: a court may assess penalties, costs, and attorney fees if records were willfully withheld.

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Changes to Open Records During the State of Emergency

- 2020 General Assembly passed Senate Bill 150.
- SB 150 expired on June 29, 2021. However, during the 2021 Special Session, the General Assembly revived SB 150 until January 15, 2022, to the extent that its provisions "are not superseded by statute or administrative regulation." 2021 House Joint Resolution 1 § 2(1)(c).
 - Notwithstanding the fact that SB 150 allowed 10 calendar days for a public agency to respond, this provision was "superseded by statute" when the General Assembly enacted HB 312 during the 2021 Regular Session. HB 312 controls the deadline by which an agency must respond, and the deadline is five business days.
 - HB 312 did not otherwise amend requirements for permitting in-person inspection. Thus HB 312 did not supersede the discretion granted in SB 150 to an agency to deny in-person inspection at the agency's facilities. Until January 15, 2022, public agencies may continue to deny in-person inspection of records.

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Questions on Open Records?



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Open Meetings Law

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What is the Open Meetings Act and what does it do?

- Kentucky Law that establishes a right of access to public meetings.
- Recognizes that public policy should not be conducted in secret.
- Requires that discussions of public business occur in meetings open to the public.
- The law is contained in KRS 61.800 to KRS 61.850.

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What is a “Public Agency” for Open Meetings purposes?

- Common examples
 - State and local government board, commission, and authority
 - County and city governing bodies, school district boards, special district boards and municipal corporations
 - State and local government agencies created by statute, etc.
- A committee created by a public agency would be its own public agency for open meetings purposes.
- Take Note:
 - “Public Agency” has a narrower definition for open meetings purposes than open records purposes.
 - Example: A city’s mayor is a public agency for public records purposes but not public meetings purposes.
- For full list, consult KRS 61.805(2) or pages 18-19 of the guidance document.

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What is a Public Meeting?

- If there is a quorum of members of any public agency where:
 - Any public business is discussed; or
 - Any action is taken by the agency.

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What is Public Business?

- “Public business is not simply any discussion between two officials of the agency. Public business is the discussion of the various alternatives to a given issue about which the [agency] has the option to take action.”
- Day to day administrative work - too remote from the decision-making process to invoke the Act – IS NOT PUBLIC BUSINESS.
 - Ex: Discussion of when to hold a public meeting is not itself a public meeting

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General Requirements of the Open Meetings Act

Time and Place of Meetings KRS 61.820(1)

- Must be convenient to public, but it does not have to be the most convenient time or place.
- The location must allow for effective observation by the public.

Schedule of Meetings KRS 61.820(2)

- Must be established by an official vote, such as by ordinance, order, resolution, or bylaw.
- The schedule of meetings must be made available to the public.

Minutes of the Meetings KRS 61.835

- Must be taken at every meeting.
- Must be an accurate record of the votes and actions taken.
- Must be approved by end of next meeting.
- Not required for closed meeting.

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General Requirements of the Open Meetings Act

Public Attendance KRS 61.840

- Physical conditions of the meeting room should allow effective observation.
- No conditions for attendance other than those for maintaining order may be used.
- Public has a right to observe, but not to participate.

News Media KRS 61.840

- News Media must be permitted to attend.
- Video recording and broadcasting must be permitted so long as it will not disrupt the meeting.

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Special Meetings

- Any meeting that is not a regularly scheduled meeting.
- May only be called by the presiding officer or a majority of public agency's members.
- Agency must provide written notice of the special meeting consisting of the:
 - Date of meeting.
 - Time of meeting.
 - Location of meeting.
 - Agenda for meeting (this agenda must be strictly followed).

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Special Meetings

- Delivery and Posting of Notice.
 - Personal delivery or fax or by facsimile.
 - To members and media with 24 hours before.
 - Must be posted in a conspicuous place, i.e., entrance to the building or a public facing bulletin board, at both the agency headquarters and the location of the meeting (if the two are different locations).
 - The notice must also include the special meeting agenda.
 - Simply posting the notice on the agency's website does not satisfy this requirement, but the agency is encouraged to post the notice on its website in addition to physically posting the notice at the agency's headquarters and meeting location.
- Email notice is appropriate for anyone who indicated such a preference in writing.

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Emergency Special Meetings

- Agency must make a reasonable effort to notify members, media organizations, and public of the emergency meeting. KRS 61.823(5).
- The presiding officer must begin the emergency meeting by describing the emergency that prevented it from providing notice of a special meeting under KRS 61.823.
 - This explanation must be included in the minutes.
- Discussion and action at the emergency meeting must be limited to the emergency for which the meeting was called.
- The Attorney General has very rarely found conditions to be grave enough to justify an emergency meeting.

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Video Teleconferences

- A video teleconference is a meeting that occurs in at least two locations where participants both see and hear each other using video and audio equipment. KRS 61.805(5).
- Any remote meeting being conducted by video teleconference must be properly noticed, and such notice shall:
 - Clearly state that meeting will be conducted via video teleconference.
 - Precisely identify a primary location where all members can be both seen and heard, and where the public and media can attend.
- Any interruption in video will result in immediate suspension of meeting until the broadcast is restored. KRS 61.826(4).
- Because members must both be seen and heard, telephone conferencing is not allowed. KRS 61.826.

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Closed Sessions

- The Open Meetings Act allows a public agency to discuss certain subjects in a closed session where the public is excluded.
- Prior to entering closed session:
 - Notice be given, in an open meeting, of the nature of the business to be discussed.
 - The general reason for the closed session must be given, and
 - The specific provision authorizing the closed session must be cited. KRS 61.815(1)(a).
- A motion must first be made and carried in the open session of the meeting. KRS 61.815(1)(b).
- No final action may be taken in closed session and only the matter that justified the closed session may be discussed. KRS 61.815(1)(c) and (d).
- The 14 subjects that may be discussed in a closed session can be found at KRS 61.810 or pages 22-23 of the guide.

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Additional Closed Session Considerations

- Any series of less than quorum meetings, where the members attending one or more of the meetings constitute a quorum of the agency, held to avoid the rule is prohibited. KRS 61.810(2).
- Prior to entering closed session the agency must provide a statement describing the exception and a description of the business to be discussed that is detailed enough that the public can assess the propriety of the closed session.

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Additional Closed Session Considerations

- When an agency is entering closed session to discuss a personnel issue, the employee need not be identified. However, an agency must state, at a minimum, whether closed session discussions may lead to the appointment, lead to the discipline, or lead to the dismissal of an employee. KRS 61.810(1)(f). Simply stating that the closed session discussion will be about "a personnel matter" is not sufficient.
- The requirement that notice be given in open session is relaxed if a public agency will be discussing information that is exempt under certain enumerated exceptions. KRS 61.815(2). For example, a public agency discussing pending or proposed litigation need not provide specific information that would identify the proposed or pending litigation.

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Complaint/Appeals Process

- A person who believes a public agency violated the Open Meetings Act must first submit a written complaint to the presiding officer of the agency and
 - Describe the violations.
 - Propose remedies for how the agency may correct the alleged violations.
- The agency must then decide whether to correct the violation and notify the complaining party of its decision. KRS 61.846(1).
- If it chooses to reject the proposed remedy, a public agency's written response must cite the statute that authorized its action and briefly explain how the exception applies.

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Complaint/Appeals Process

- The complaining party may then appeal to the Attorney General within 60 days of receipt of the Agency's decision. KRS 61.846(2).
 - Note: there is not an equivalent time limitation for an open records appeal.
- Either party may appeal the Attorney General's decision to the circuit court within thirty days of receipt.
- If no appeal is taken, the Attorney General's decision has the force of law and can be enforced in circuit court.

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Changes to Open Meetings During the State of Emergency

- 2020 General Assembly passed Senate Bill 150.
- SB 150 expired on June 29, 2021, but was revived until January 15, 2022. See 2021 House Joint Resolution 1, enacted during the 2021 Special Session.
- Effective until January 15, 2022:
 - A public agency may continue to conduct meetings via audio teleconferencing technology.
 - A public agency may continue to hold virtual meetings, so long as the notice of the meeting provides specific information on how the public may attend, i.e., a website URL.

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Questions on Open Meetings?



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Easy to Find Useful Pages

Page 29 – Sample Open Records Request

Page 30 – Sample Open Records Response

Page 31 – Sample Open Records Appeal

Page 32 – Sample Open Meetings Complaint

Page 33 – Sample Open Meetings Response

Page 34 – Sample Open Meetings Appeal

Page 35 – Sample Open Records Rules & Regulations

Page 38 – Internet addresses of Additional Resources

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