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***Attorney General Advisory:  
Changes to the Open Records Act and Open Meetings Act following the  
Regular Session of the 2021 General Assembly***

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This Attorney General Advisory is intended to provide public agencies and the general public with updates regarding the Open Records Act and Open Meetings Act following the Regular Session of the 2021 General Assembly. This Advisory addresses two primary matters.

***First***, the 2021 General Assembly passed House Bill 312 (HB 312), which makes several important changes to the Open Records Act.

***Second***, the COVID-19 pandemic led to several temporary changes to the Open Records Act and Open Meetings Act, such as extending the time for a public agency's response to an open records request to ten days, permitting a public agency to deny in-person inspection of public records, and permitting more flexibility for video and audio conferencing of public meetings. The temporary changes resulted from the enactment of Senate Bill 150 (SB 150) during the Regular Session of the 2020 General Assembly.

In 2021, the General Assembly enacted House Joint Resolution 77 (HJR 77), which declares that the COVID-19 state of emergency ends on June 28, 2021. HJR 77 is the subject of several pending court actions that have resulted in conflicting decisions. Accordingly, the Attorney General recommends that public agencies comply with the Open Records Act and Open Meetings Act without resorting to any temporary changes made permissible under SB 150. Doing so will ensure that public agencies meet the requirements of the Open Records Act and Open Meetings Act regardless of how courts ultimately rule on HJR 77. Moreover, complying with the Open Records Act and Open Meetings Act as written—and without resort to SB 150—provides Kentuckians with the greatest amount of transparency and government responsiveness while observing best practices in an uncertain legal environment.

### **Open Records Act**

**First**, HB 312 amends KRS 61.880(1) so that after June 29, 2021, a public agency must respond to a request to inspect records within **five** business days. Previously, the law required a response within three business days.<sup>1</sup>

**Second**, HB 312 also alters how requests to inspect records may be made and accepted. Beginning on June 29, 2021,<sup>2</sup> only residents of the Commonwealth may request to inspect public records. The definition of “resident” will be codified at KRS 61.870(10), but it includes individuals and businesses living, operating, and working within the Commonwealth, as well as news-gathering organizations.<sup>3</sup> Thus, effective June 29, 2021, a person submitting a request to inspect public records must include with the request a statement that the person making the request is a resident of the Commonwealth. A public agency may deny a request to inspect records that does not include such a statement. *See* KRS 61.872(2).

**Third**, effective June 29, 2021, a public agency must update its policies and procedures to include both the mailing address and email address at which its records custodian may receive requests. KRS 61.876(1)(b). HB 312 requires a public agency to accept a request to inspect records submitted by email to the records custodian’s email address that is contained in the policy. KRS 61.872(2)(a).

**Fourth**, each public agency must also publish its policies and procedures on its website. KRS 61.876(2). Under HB 312, the Attorney General will promulgate by regulation a standardized form by which any resident may request to inspect public records. That form is available [here](#), and must be made available on each agency’s website. Although a records custodian may not require the use of any particular form, the records custodian must accept any request submitted on the form published by the Attorney General.

**Finally**, during the COVID-19 state of emergency, a public agency is permitted to deny in-person inspection of public records at the public agency’s headquarters. *See* SB 150 §1(8)(a). A public agency that is subject to the Act, however,

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<sup>1</sup> During the COVID-19 state of emergency, SB 150 permits a public agency to respond to a request within ten calendars days. Until the legal effect of HJR 77 is finally resolved by the courts, a public agency should assume that the temporary changes made to the Act by SB 150 will expire on June 28, 2021. Therefore, if a public agency receives a request to inspect records on or after June 29, 2021, then under the amendments to KRS 61.880(1), a public agency must respond to such request within five business days.

<sup>2</sup> This provision is not affected by pending litigation. Accordingly, it is effective June 29, 2021, without question.

<sup>3</sup> HB 312 incorporates by reference the definition of “news-gathering organization” in KRS 189.635(8)(b)1.

should presume that SB 150 no longer applies beginning on June 29, 2021. Thus, a public agency that permits in-person inspection of records on or after June 29, 2021, will not be found to be in violation of the Act.

### **Open Meetings Act**

The 2021 General Assembly did not amend any provision of the Open Meetings Act. However, if the courts ultimately find that HJR 77 is constitutional, then that will mean that the state of emergency has expired. Public agencies must return to normal operations under the Open Meetings Act once the state of emergency expires. Thus, a public agency that is subject to the Act should operate as if SB 150 expires on June 28, 2021. In that case, effective June 29, 2021, a public agency that wishes to conduct public meetings via video teleconferencing must do so subject to the traditional requirements of KRS 61.826. Out of an abundance of caution to avoid violating the Act and in the interest of the transparency for which the Act was codified, a public agency should presume that, effective June 29, 2021, it will no longer be permitted to use audio teleconference technology to conduct open meetings under the Act. Any public agency conducting a “virtual meeting” must do so using video teleconference technology. KRS 61.826.

Under the traditional requirements of KRS 61.826 for holding open meetings via videoteleconferencing, public agencies holding open meetings must “provide meeting room conditions, including adequate space, seating, and acoustics, which insofar as is feasible allow effective public observation of the public meetings.” KRS 61.840. And under KRS 61.826(2)(b), when a video teleconference meeting occurs, the public agency must provide notice that “precisely identif[ies] a primary location of the video teleconference where all members can be seen and heard and the public may attend in accordance with KRS 61.840.” Moreover, “[t]he same procedures with regard to participation, distribution of materials, and other matters shall apply in all video teleconference locations.” KRS 61.826(3). A public agency should assume that these provisions once again apply to all meetings under the Act beginning on June 29, 2021.

### **Further Guidance**

On June 29, 2021, the Office of the Attorney General will provide an update to “The Kentucky Open Records & Open Meetings Acts: A guide for the public and public agencies.” A copy of the updated guidance will be made available on the Attorney General’s website. The guidance will address all changes made to the Acts during the 2021 General Assembly.