

KDLA March 2011 Trustee Tip of the Month How Does the Library Respond to Open Records Requests?

Quick Tips

- ◆ Trustees can find more information on Open Records requests in the document, *Your Duty Under the Law*.
- ◆ All records maintained by the library, as a public agency, whether stored in a computer or on paper are “public records.”
- ◆ With only a few exceptions, these public records are considered “open records” and are to be made available for inspection upon request.
- ◆ Any person may make a written request to inspect any non-exempt public records.
- ◆ The library must respond to the request in writing within three business days.

As a Kentucky public library trustee, you create and maintain records of the activities of the library you serve. These records, and other records held by the library, are open to inspection by interested members of the public, with exceptions.

It is important that you as a trustee and the employees of the library you serve know how to respond to requests for open records.

What records are considered “open records?”

The Kentucky Open Records Act [[KRS 61.870](#) to [KRS 61.884](#)] give the public access to the library’s records. These records are any records that are prepared, owned, used, possessed, or retained by a public agency, and must be made available upon request.

These records include, but are not limited to: financial documents such as annual budgets, audits and monthly expense vouchers, minutes of previous meetings and library policies.

Records pertaining to employees are also considered open records, including, but not limited to: name, position, work station, and salary of employees, reprimands regarding job-related misconduct, letters of resignation and public employee timesheets.

However, some information pertaining to employees and library patrons are not considered open to public perusal, including: race, gender, home addresses, social security numbers, medical records, and marital status of employees, employee evaluations, applications and resumes from unsuccessful applicants for jobs, and patron registration and check-out records.



Serving Kentucky's Need to Know

How do libraries respond to open records requests?

The Open Records Act also addresses how public entities should respond to open records requests. Libraries have three days in which to *respond* to an open records request; however, the library does not have to furnish the records within the three-day time frame. Libraries are not required to honor requests for “information;” rather, the request should be for specifically described records.

As part of the response to the request, the library should notify the requestor if the record is in active use, in storage, or not otherwise available, and designate a place, time, and date for inspection of the public record.

After the response to the request, libraries should take a reasonable amount of time to gather and prepare the records for inspection. Inspection may be delayed if a detailed explanation of the cause for the delay is given and the place, time, and earliest date on which the public record will be available for inspection is stated.

Exempt information must be redacted from the record before it is provided to the requestor. In the case of requested information that contains exempt information, the library should copy the original, masking the protected information on the copy.

A library must make suitable facilities available for the exercise of the right of inspection of public records. Persons may inspect public records during the library's regular operating hours. A community room or other public space in the library is recommended for inspection; since libraries are responsible for protecting open records from removal or alteration, the applicant for inspection should be supervised by a library employee.

Original copies of public records shall not be removed from the library without the written permission of the official custodian of the records - usually the library director; however, persons have the right to make copies of records. Ten cents has been found by the State Attorney General to be a reasonable fee for reproducing standard hard copy records.

As a part of your appointment as a Kentucky public library trustee, you receive a copy of *Your Duty Under the Law*, which addresses the importance of the transparency of library board meetings and records maintained by the library. This document is available online at http://ag.ky.gov/nr/rdonlyres/ddb68390-d61f-4771-96d0-32a3db794710/0/yourdutyunderthelaw_708_.pdf.

This is not legal advice and I am not an attorney. If you feel you need legal advice you should consult an attorney.

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Sources:

Providing access to records:

KRS 61.872(5). 02-ORD-240, 02-ORD-142, 01-ORD-38, 98-ORD-17, 95-ORD-105, 95-ORD-17, 94-ORD-75, 92-ORD-1567, 92-ORD-1421, OAG 91-200.

Providing facilities for review of records:

KRS 61.872(1), 03-ORD-83, 02-ORD-114, 02-ORD-94, 99-ORD-96, 00-ORD-8 (use of agency computer to inspect “original” public records), 93-ORD-46.

Inspection during regular hours:

KRS 61.872(3).

Protection of original copies and right of public to make copies:

KRS 61.872 (1), KRS 61.874(1).

Right of agency to refuse to answer requests for “information” rather than specific records:

02-ORD-213, 02-ORD-175, 99-ORD-71, 97-ORD-182, 96-ORD-150, 96-ORD-146, 96-ORD-53, 95-ORD-150, 95-ORD-131, 03-ORD-213, 03-ORD-12, 02-ORD-161, 98-ORD-17, 97-ORD-86, 97-ORD-46, 96-ORD-171, 96-ORD-91, 95-ORD-108, 95-ORD-68, 94-ORD-108, 94-ORD-12, 93-ORD-116, OAGs 92-56, 91-58, 91-7, 90-83, 89-81, 89-8, *Department of Corrections v. Chestnut*, Ky. App., 2004-CA-001497-MR.

Right to view specific employee information regarding name, work station, work hours, salary, resignation, disciplinary actions, and portions of resumes:

01-ORD-245, 99-ORD-173, 98-ORD-184, 98-ORD-171, 94-ORD-26, 93-ORD-45, OAGs 91-48, 87-84, 87-37, 76-717, 00-ORD-137, 00-ORD-90, OAGs 92-59, 91-202, 91-198, 91-41, 00-ORD-137, 00-ORD-90, OAGs 92-59, 91-202, 91-198, 91-41, 04-ORD-031, 02-ORD-222, 02-ORD-140, 00-ORD-104, 99-ORD-39, 98-ORD-45, 97-ORD-128, 97-ORD-121, 96-ORD-86, 95-ORD-123, 95-ORD-47, 92-ORD-1515, OAGs 92-34, 92-17, 91-20, 97-ORD-121, 94-ORD-108, 96-ORD-239, *Palmer v. Driggers*, Ky.App., 60 S.W.3d 591 (2001).

Right of agency to withhold specific employee information, including social security number, race, gender, evaluations, home address, marital status and medical information:

96-ORD-252, 02-ORD-197, 96-ORD-275, 96-ORD-256, 96-ORD-1145, OAGs 91-62, 89-90, 86-15, 83-286, 77-394, 97-ORD-176, 94-ORD-91, OAGs 91-35, 91-202, 91-185, 91-81, 91-48, 90-60, 87-37, 79-275.

Right of agency to withhold resumes from unsuccessful job applicants:

OAG 90-113.

Right of agency to charge a reasonable fee (ten cents) per copy for reproducing records:

Friend v. Rees, Ky. App., 696 S.W.2d 325 (1985), OAG 92-79, 91-210, 91-193, 87-80, 84-91, 82-396, 80-421.