

Kentucky Electronic Records Working Group Guidelines for Responding to Open Records Requests for Public Records in a Database

PURPOSE

The purpose of these guidelines is to assist state and local government agencies in responding to open records requests for records stored in an electronic database.¹ These general guidelines, while voluntary, outline current best practice. The guidelines are based on Kentucky's open records and public records laws and regulations, Office of the Attorney General Decisions and publications, Commonwealth Office of Technology Enterprise Architecture and Standards, State Archives and Records Commission Records Retention Schedules, and accepted record keeping best practices. These guidelines do not address specific issues concerning individual requests, whether the records identified in the request are subject to inspection (exempt or non-exempt), or if the request must be honored or can be denied. Guidance on exemptions for particular records can be found in the Open Records Law as construed by the courts and the Office of the Attorney General.

The Office of the Attorney General is charged with the enforcement and application of the Open Records Act, and in furtherance of that authority, has published manuals and decisions summarizing the requirements of the Open Records Act. Attorney General publications including, *Protecting Your Right to Know: The Kentucky Open Records and Open Meetings Acts* and *Your Duty Under the Law: Kentucky Open Records and Open Meetings Acts*, contain summaries of the Open Records law to guide agencies and requestors on what the law requires as interpreted and applied by the courts and the Office of the Attorney General.²

Issues raised by requestors are addressed through open records appeals to the Attorney General and, in some cases, a further appeal to the courts. Specific questions on an agency's legal duties in responding to open records requests should be submitted to agency's General Counsel. These guidelines provide technical and supplementary material to assist agencies in dealing with specific electronic records issues.

OVERVIEW

Kentucky government data is routinely maintained and stored in electronic databases. Kentucky's Open Records Act, Kentucky Revised Statutes (KRS 61.870 – KRS 61.884), requires that public agencies make non-exempt records stored in electronic databases available to the public upon request.

Generally, requestors have specific needs and require only the generated output of databases to satisfy their requests. These outputs are routinely filtered or sorted through report queries or standard reporting processes that provide data presented in a meaningful manner to the requestor.

¹ The term "record(s)" as used in these guidelines refers to public records as defined in KRS 61.870(2). See Definitions section. It is not used as a database or IT term.

² See Attorney General web site: <http://ag.ky.gov/publications/Pages/default.aspx>

A database can consist of many inter-dependent components. Such components may include, but are not limited to, the following: software, hardware, program logic, data tables, security tables, access controls, data and table links, and mathematical and other logical computations. In some cases, records stored in multiple databases and on multiple operating platforms might increase the challenge of responding to a request. Raw data or records taken out of the database context might not be meaningful, without proper database links or documentation.

The challenge is to respond to the request, as required by law, without compromising system security, disclosing exempt information, or revealing proprietary information that might violate licensing agreements. Many of these challenges can be partially solved if public agencies place non-exempt portions of databases online. This allows the public to search the data themselves. (See KRS 61.874(6) and the section on Online Access.) This does not, however, relieve the public agency of its duty to produce the records in response to an open records request.

GUIDELINES AND BEST PRACTICES

Official Request

The agency's records custodian (or designee) should handle the open records request to ensure that the requestor receives the records requested. To preserve the rights and interests of the requestor and the agency, and to eliminate confusion about the records sought, open records requests should be submitted in writing and describe the records to be inspected. See KRS 61.872(2).

In some cases, the records custodian may need additional information from the requestor to determine what information is being sought. Questions for consideration:

- What data or records are being requested?
- If appropriate, what is the method of sorting the requested data?
- What is the appropriate file format? (ASCII text in fixed field, ASCII in comma separated values (CSV), Microsoft Access, etc.) "Flat ASCII," referred to in the statute, is the minimum standard format, and is the least functional format available. If the record is stored in another format that conforms to the requestor's requirements, then that format may be used.
- What is the desired method of transfer/delivery of the data requested? (FTP, flash drive, CD-ROM, DVD-ROM, etc.) Note: While the Open Records Act does not require agencies to provide specific media to requestors, agencies should consider the requestor's preferred method of transfer, the security of transfer, and costs associated with the transfer.
- Is there appropriate supporting documentation (data dictionaries, relationships within the data, field definitions, etc.) necessary to make the requested records meaningful?

Records custodians are not expressly authorized by statute to request additional information and must be careful to limit questions to those aimed at clarifying what records are being sought and how best to fill the request. Records custodians cannot inquire into the requestor's purpose

in requesting the records, or how the records will be used, other than to ask whether the records will be used for a commercial purpose, as defined in the Open Records Act, KRS 61.870(4) and KRS 61.874(4). The records custodian cannot condition the requestor's right of access on the requestor's willingness to provide additional information, but may only solicit the information in furtherance of his/her duty in fulfilling the request. Determining the purpose, benefit, or usefulness of the data is not the responsibility of the agency.

Finally, the agency must respond, in writing, to the request in three (3) business days, except where other state law applies.³ This response must:

1. Provide for delivery of the requested records and any potential copying and postage fees (if applicable). See KRS 61.880(1), KRS 61.872(3)(b), and KRS 61.874(1).
2. Provide the requestor with a written response containing a detailed explanation of the cause for delay and the earliest date on which the records will be available, if the records cannot be produced within three (3) business days. See KRS 61.872(5).
3. Notify the requestor if all or any portion of the data or records she/he is requesting is exempt under one or more of the statutory exemptions, and that those exempt records will not be disclosed. The response should cite the relevant statutory exemption(s) and briefly explain the application of the exemption(s) to the data or records withheld. See KRS 61.880(1) and KRS 61.878(1)(a) through (n).

Exempt Records

Agencies should be aware that some databases may contain data that is exempt and should be properly redacted before disclosing the non-exempt data. For example, Social Security Numbers are generally protected from disclosure. KRS 61.878(1)(a) through (n) lists exemptions from public inspection under the Open Records Act. A public agency may withhold information for which an exemption is claimed unless directed to disclose the records by the courts or by the Office of the Attorney General in an adverse open records decision that is not appealed to circuit court. See KRS 61.878(1) and KRS 61.880(5)(6).

While KRS 61.878(1)(a) through (n) provides specific exemptions for public agency records requested under the Open Records Act, records custodians must be aware of other state and federal laws regarding privacy and confidentiality that affect their agency records. For example, the Driver's Privacy Protection Act (DPPA) relating to motor vehicle records maintained by county clerks and the Family Educational Rights and Privacy Act (FERPA) relating to student education records maintained by educational institutions, require confidentiality for records in the custody of certain public agencies.

In cases where records are requested from a database containing exempt and non-exempt data, the records custodian must redact exempt data and make the non-exempt data available to the requestor. Redacting exempt data is the duty of the agency and is not equivalent to creating a new record or fulfilling a non-standard request. The records custodian cannot charge for programming or staff time required for redaction. It is recommended that databases be designed to facilitate the separation of exempt and non-exempt data.

This will allow exempt records to be easily separated from non-exempt records in responding to

³ For instance, KRS 197.025(7) provides that the Department of Corrections shall respond within five (5) business days following the receipt of an open records request.

open records requests.⁴ While an agency is not required to reformat existing databases, the agency may wish to evaluate existing databases to improve agency response and enhance agency efficiency.

Standard vs. Non-Standard Requests

Generally, open records requests are made to obtain specific information from a database. In many instances, standard reports or queries (see Definitions) can easily extract the records needed to satisfy the request. These instances are standard requests. The use of these standard reports or queries as “standard requests” when applied to databases is a common interpretation of the term as used in the statute. See KRS 61.874(3). In responding to a standard request, the records custodian can charge a reasonable fee that *does not* exceed the actual cost of reproduction. Reproduction includes media and mechanical processing costs, but *cannot* include staff time or programming costs. See KRS 61.874(3).

In some cases, additional programming may be necessary to fulfill the open records request. If the data requested cannot be retrieved through a pre-existing query, filter, or sort, the request is considered non-standard, and the records custodian has the discretion whether or not to fulfill the request. See KRS 61.874(3). If the records custodian chooses to respond to a non-standard request, the records custodian is allowed to charge fees to recover staff time and programming costs the first time the request is made. The records custodian must treat subsequent requests for the same data that is extracted using the same programming as standard requests, since the query, filter, or sort now exists and no additional programming is necessary to fulfill the request.

Requests for Entire Databases or for Portions of Databases

Allowing on-site inspection of non-exempt public records stored in a database, which is required by law, poses unique challenges. Some of these challenges may include:

- 1) Establishing a read-only account for the requestor to use;
- 2) Educating the requestor on how to use the system;
- 3) Making sure the records seen by the requestor do not contain restricted information; and
- 4) Segregating the requestor from other parts of the system that are not related to the request.

On-site inspection of databases is rarely requested, but, if it is, and a public agency is unable to honor this request for these or other reasons, the agency should respond within three (3) business days of receipt of the request. The agency should provide the requestor with specific reasons preventing compliance with the request. If an alternative exists that is functionally equivalent to an on-site inspection, the agency may offer the requestor that alternative in its written response. More practical alternatives can include online access to portions of the database or export of portions of the database that are not restricted.

Requestors seeking an entire database or substantial portions of a database should be notified of the potential problems that may occur if raw data is received without the necessary components of the entire database. The agency should provide the data in the format in which it is maintained or any other format readily available to the agency without any additional programming. The agency should take reasonable measures to accommodate the requestor by

⁴ When creating databases with redacted layers, the file produced for distribution should be a combination of the original file and the redacted layer(s), so that they are one image with one layer. Once the new file is saved, it should not be possible to lift the redaction from the confidential fields. As noted, the necessity of redacting exempt records from non-exempt records cannot be equated with a non-standard request.

providing the record in a format mutually agreeable to the agency and the requestor.

Data should be exported in standardized electronic formats. The Open Records Act states that the minimum standard format for electronic records is flat file ASCII format. See KRS 61.874(2)(b). If the agency maintains the records in a format other than ASCII, however, and this format conforms to the requestor's requirements, the agency may consider the native format a standard request. If the database has a built-in export function that can easily create a new file in other file formats (such as Word, Excel, PDF, etc.) from an existing query, filter, or sort, the records custodian may offer the requestor the file in one of those formats as a standard request.

If the records provided do not fit the requestor's description, or if it is impossible for the agency to provide the requestor the entire database, the Open Records Act requires the records custodian to inform the requestor of the reasons why the request cannot be fulfilled. These reasons must relate to any applicable statutory exemptions, may relate to legal limitations, logical database design, licensing limitations, security concerns, data links, proprietary software and hardware, or, in rare cases, an undue burden on the agency.⁵

Although not required by statute, when fulfilling open records requests for an entire database or a sizable portion of a database, the records custodian is encouraged to provide additional information to assist the requestor in interpreting the data or records requested. Examples of supplementary data include, but are not limited to:

- The minimum software and hardware specifications the database requires;
- Any unique and specialized proprietary software used in the system (in accordance with licensing agreements);
- Data dictionaries;
- Field definitions; and
- Relationships between tables

The records custodian is not required to provide software, hardware, or any logical data that would compromise system security, licensing regulations, or agreements. See KRS 61.870(3)(b). Records custodians should be aware of terms of service applicable to software used within the agency.

Although not required to do so, the records custodian may provide a contact person to answer the requestor's questions, in the event that the requestor has difficulty interpreting the record(s) received in response to the request.

Commercial Requests

If the requested record(s) will be used for commercial purposes, the agency may charge the requestor a reasonable fee based on the cost of the media, mechanical processing, and staff time required to reproduce the record(s). See KRS 61.874(4)(b). The records custodian may also recover, "the cost . . . of the creation, purchase, or other acquisition of the public records." The records custodian may require the requestor to enter into a contract with the agency that establishes the specified fee and the commercial purpose. See KRS 61.874(4)(b).

⁵ Refusal to produce records on the grounds that production of the record places an unreasonable burden on the agency must be sustained by clear and convincing evidence. Therefore, an agency must be prepared to specifically articulate why the request places an undue burden on the agency before invoking KRS 61.872(6).

KRS 61.870(4)(a) defines “commercial purpose” as the direct or indirect use of any part of a public record or records, 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 fee. KRS 61.870(4)(b) excludes from the definition of commercial purpose the use of public records by print media, by radio, or by television stations in its news or other informational programs, and by the use of the records in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties.

Online Access

If public agencies receive frequent requests for particular database(s), they are encouraged to make the database(s) available online for public access. See KRS 61.874(6). If the database contains exempt records, an agency must ensure that all restricted data is securely obstructed from view. The records custodian can then direct requestors to their searchable online databases. Requestors may be required to enter into a contract, license, or other agreement with the agency to ensure recovery of fees as set forth in KRS 61.874(6)(a)(b). While an agency may charge fees in order to recover the cost of providing the records online, these fees cannot exceed the cost of physical connection to the system and the reasonable cost of computer access charges. If the records are requested for a commercial purpose, the records custodian may also charge fees based by KRS 61.874(4).

While the records custodian may advise requestors of the availability of the online database, this does not relieve the agency of its duty to respond to a traditional open records request by producing a copy or allowing inspection of the database, if the requestor declines online access. If the agency charges a fee for online access to public records, the agency may still be required to process an open records request for parties who do not wish to pay the fee for online access.⁶ See KRS 61.874.

RECOMMENDATIONS

1. The specific requirements of the Kentucky Open Records Act and the Kentucky Public Records Act should inform the design of new databases to ensure that records in those databases are accessible.
2. Databases should be searchable online to make government records more accessible to the public, when possible.
3. Exempt and non-exempt items should not be contained in the same field in a database.
4. Logical database design is essential to facilitate response to open records requests. Consider statutory and confidentiality exemptions, licensing limitations, security concerns, data links, and proprietary software and hardware, when designing databases.
5. Descriptive information about the agency's databases, their contents, and schemas should be accessible to ensure accurate and timely response to an open records request.
6. Agencies with little or no experience with in-house database design are advised to seek knowledgeable assistance when designing a database.

⁶ Kentucky's transparency initiative is available on the Open Door: Kentucky's Transparency Portal. (See: <http://opendoor.ky.gov/transparency/Pages/default.aspx>)

DEFINITIONS

Closed (Exempt) Record – A public record that is restricted from public access according to the exemptions listed in KRS 61.878(1). (See Open (Non-exempt) Record)

Column (in a database) – A vertical set of data values of a particular simple type, one for each row of the table. The columns provide the structure according to which the rows are composed. (See Row and Table)

Commercial Use (Commercial Purpose) – Is the direct or indirect use of any part of a public record or records, 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 fee.

"Commercial Purpose" shall not include:

1. Publication or related use of a public record by a newspaper or periodical;
2. Use of a public record by a radio or television station in its news or other informational programs; or
3. Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties.

Database – A collection of data that is organized so that its contents can easily be accessed, managed, and updated. Databases contain aggregations of data or files. The most prevalent type of database is the **relational database**, a tabular database in which data is defined so that it can be reorganized and accessed in a number of different ways. A **distributed database** can be dispersed or replicated among different points in a network. An **object-oriented programming database** is one that is congruent with the data defined in object classes and subclasses.

Data Set – See File

Data Dictionary – Information regarding the layout, content, or use of a data field within a database and the relationship between tables. The data dictionary may be stored in a separate table or may be identified by showing the properties of a table.

- Examples of layout would include the type of file (text, excel version, HTML...), delimiters used (comma, tab, @...), field layout if fixed length (1-4 is field 1, 5-25 is field 2), and other information the requestor would need to be able to load or use the data.
- Examples of content would include code tables when the output is not text (for field 15 1=Yes and 2=No, for field 12 1=Active, 2=Terminated, 3=Pending...), a list of the field names, definitions of the contents of the fields if not readily defined by the name, etc.
- Examples of the use of the output might include information on how to combine information when the output is in multiple files (use field 1 from file 1 = field 1 from file 2) so that the user can create their own query.

Field – A defined area within a database. The properties of a field include a field name, format (e.g. text or number), and a field size.

File – Two or more records of identical layout treated as a unit. The unit is larger than a record,

but smaller than a data system, and is also known as a data set or file set.

Filter – A filter sets conditions that are compared with one or more fields in the database. If the conditions are met, the data is displayed. If the conditions are not met, the data is filtered out so that it isn't displayed with the rest of the data records. Filtering is done to make it easier to focus on specific information in a large database or table of data. Filtering does not permanently remove records it just temporarily hides them from view.

Media – The physical material in or on which records may be stored or represented, and which may include, but is not limited to, paper, microform, disks, diskettes, optical disks, magnetic tapes, and cards. Common types of media are CD-ROM, DVD-ROM, flash drives, and portable/removable hard drives.

Open (Non-Exempt) Record – A public record that is subject to examination by the public according to the Open Records Law, KRS 61.870 – KRS 61.884. (See Closed (Exempt) Record)

Public Records – Public Records are defined by Kentucky Revised Statutes KRS 61.870(2) as "all books, papers, maps, photographs, cards, tapes, disks, diskettes, recordings and other documentary materials, regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency."

Proprietary Formats / Software – Privately owned and controlled. A proprietary design or technique is one that is owned by a company. It also implies that the company has not divulged specifications that would allow other companies to duplicate the product.

Query – A question, or search string, often required to be expressed in a formal way. A database query can either be a select query or an action query.

- A **select query** (standard report) is a data retrieval query. It specifies what fields/columns the user wants to retrieve as well as defines parameters/criteria that must be met for the data to be retrieved. Parameters can include date ranges, specific entries in a field/column, specific geographical regions, etc. The type and range of parameters will depend on the fields in the underlying data. Select queries can also include calculations on the data, such as sum, minimum, maximum, etc. that act upon a specified field.
- An **action query** can ask for additional operations on the data, such as insertion, updating, or deletion.

The standard user and application program interface to a relational database is the Structured Query Language (SQL). SQL statements are used both for interactive queries for data from a relational database and for gathering data for reports.

Records Custodian – Any authorized person having personal custody and control of public records in an agency. **Official Custodian** means the chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care, and keeping of public records, regardless of whether such records are in their actual personal custody and control.

Redact – To render confidential or exempt data unreadable. Redaction should be done on the **copy** of the record given to the public as a response to an open records request and should be complete enough that the redacted data is not recoverable. The original data should remain unchanged.

Relational Database – A relational database is a collection of data items organized as a set of formally-described tables from which data can be accessed or reassembled in many different ways. In addition to being relatively easy to create and access, a relational database has the important advantage of being easy to extend. After the original database creation, a new data category can be added without requiring that all existing applications be modified.

Reports – Formatted output resulting from a database query. Reports may include summary data and special formatting for the data displayed within the report.

Row – In a relational database, a row represents a single, implicitly structured data item in a table. Each row in a table represents a set of related data, and every row in the table has the same structure. (See Column and Table) In databases, rows are sometimes referred to as records. For the purposes of this document, “record(s)” is defined using the definition of public records. (See Public Records)

Standard Request - The minimum standard format, as defined by the Open Records Act (KRS 61.870 – KRS 61.884), in paper form shall be defined as not less than 8 1/2 inches x 11 inches in at least one (1) color on white paper, or for electronic format, in a flat file electronic American Standard Code for Information Interchange (ASCII) format. If the public agency maintains electronic public records in a format other than ASCII, and this format conforms to the requestor's requirements, the public record may be provided in this alternate electronic format for standard fees as specified by the public agency. Any request for a public record in a form other than the forms described in this section shall be considered a **nonstandardized request**.

Table (in a database) – Predefined format of rows and columns that define an entity in a database.