POLICY TITLE: **Open Records Requests Policy**

EFFECTIVE DATE: 02/13/2020

DATE REVIEWED/REVISED: *01/31/2022*

Applicability

In accordance with 200 KAR 1:020 and KRS 61.870 (Kentucky's Open Records Law), public records of all agencies of Kentucky State Government, subject to certain exceptions, are open for inspection by any resident of the Commonwealth of Kentucky who desires to review them.

Policy

Lincoln Trail District Health Department (LTDHD) will ensure full compliance with all applicable Kentucky Statutes and guidelines for processing Open Record requests.

Availability of Public Records

Lincoln Trail District Health Department is open Monday through Friday, 8:00 AM to 4:30 PM, except for legal holidays. Public records are available for inspection during regular business hours.

Definitions

Public Record / Open Record – "all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency" (KRS 61.870**).**

Records Custodian - any authorized person having personal custody and control of public records.

Official Custodian – 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 his actual personal custody and control.

Resident of the Commonwealth – means:

(a) An individual residing in the Commonwealth of Kentucky.
(b) A domestic business entity with a location in the Commonwealth of Kentucky.
(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 of Kentucky.
(e) An individual or business entity that owns real property within the Commonwealth of Kentucky.
(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 KRS 61.870, Section 10; or
(g) A news-gathering organization as defined in KRS 189.635(8)(b)1.a-e.

Commercial Purpose – means 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:

(a) Publication or related use of a public record by a newspaper or periodical.
(b) Use of a public record by a radio or television station in its news or other informational programs; or
(c) 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.

Procedure

How to Request Open Records:
All requests to inspect or obtain copies of public records **must be in writing**. Written requests may be submitted by fax, email, U.S. mail, or in-person. 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 of Kentucky. Requests may be denied if the request to inspect records does not include such a statement. An *Open Records Request Form* is available at the local health centers and on LTDHD's website: www.ltdhd.org. (Although written requests are required, the form itself is not required but is available for convenience.)
(*One exception to written requests is for Onsite Sewage Files: Homeowners and installers may request these files without providing a written request. Any other person or entity who requests Onsite Sewage Files must provide a written request to obtain the records. This exception pertains only to Onsite Sewage Files.*)

For Open Records Requests for Environmental Department
Submit completed request form(s) to:
Beth Ross
Records Custodian for Environmental Department
Phone: 270-769-1601, ext.7015
Email: beth.ross@ltdhd.org

For All Other Types of Open Records Requests
Submit completed request form(s) to:
Glenda Bastin
Compliance Specialist
Phone: 270-769-1601, ext. 7005
Email: Glenda.bastin@ltdhd.org

Or mail your request to:
Attention: Official Custodian
Lincoln Trail District Health Department
108 New Glendale Rd
P.O. Box 2609
Elizabethtown, KY 42702-2609

Specificity:
Requests must specify **exactly** what is being requested to enable LTDHD to determine if the document is public record, and to identify/locate the item(s) requested. Requests lacking sufficient details (e.g., date, owner(s) name(s), property address, description of record, etc.) will be denied until the requestor provides a more specific request that provides the details needed to process the request.

Responding to Open Records Requests
Upon receipt of an Open Records request, the Records Custodian shall respond in writing to the request within five (5) business days. (Respond does not mean information requested must be released.)

Only the Open Records that are specifically requested may be released; additional records shall not be provided without an appropriate, written request.

LTDHD cannot release information on **pending** actions, inspections, and investigations. In these instances, the request will be put on hold until the pending matter has been completed. The written request will be kept on file, and the requestor will be told an approximate time when the record will be available.

LTDHD makes every effort to fulfill open records requests within five (5) business days. If requests cannot be fulfilled within that timeframe, the requestor is notified with a detailed explanation of the cause for further delay, and a time is scheduled for the earliest date when the documents will be available for inspection. Instances in which LTDHD may not be able to provide records within five (5) business days include, but are not limited to:

- The request requires retrieval of a record stored in a remote location.
- A large volume of records needs to be reviewed and copied.
- A timely response cannot be made due to staffing limitations.
- The document requires redaction of confidential information or other documents that are not identified as public record.
- A legal review is needed to determine whether the requested document is a public record.
- The requestor has not complied with agency policies or state laws regarding access to public records.
- The extent or nature of the request precludes a timely release of the requested documents.
- "If the application places an unreasonable burden in producing public records or if the records custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the Public Health Director may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence." (KRS 61.872)

Open Records Requests Specific to Environmental Department

- All Open Records requests pertaining to dog bites will be sent to the Compliance Department for review. The Compliance Specialist, or approved designee, shall release the records, if appropriate for release.
- Homeowners and Installers may request Onsite Sewage Files without providing a written request for the open record. All other requests for Onsite Sewage Files (open records) must be in writing.
- Information requested under the Open Records Act (KRS 61.878) may be denied when it is believed that the premature release of the information may be used in prospective law enforcement and would potentially cause harm to the Cabinet for Health and Family Services or local health department.
- Official Inspection Reports may be released in an Open Records request even though routine administrative enforcement action has been initiated by the local health department (e.g., restaurant inspection rating score less than seventy percent (70%)). The release of complete official inspection report observations and rating scores would typically not be considered to be a source of harm to the Cabinet of Health and Family Services or to the local health department.
- Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations may be withheld if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known. Records may also be withheld if premature release of information could impede a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under

this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884.

- In accordance with the policy of the Cabinet for Health and Family Services, pursuant to KRS 61.878(1)(a), Social Security Numbers shall not be released in a public records request but shall be deleted or stricken from the copy of the record(s) to be released.

Denial of Open Records Request

Access to LTDHD records will be denied, in whole or in part, if the requested records are not determined to be public records according to KRS 61.870 through KRS 61.884.

- Certain public records are exempted from inspection except on order of the court. (KRS 61.878)
- Information requested under the Open Records Act (KRS 61.878) may be denied when it is believed that the premature release of the information could potentially impede prospective law enforcement and possibly cause harm to the Cabinet or local health department.

If an Open Records request is to be denied as allowed by law, the Public Health Director shall be notified. A written letter of denial, signed by the Public Health Director, shall be sent to the requestor. The denial letter must include the following items:

- The exact language by the requestor in his/her request.
- State the reason(s) for the denial of any parts of the request, including ANY AND ALL citations to the exception allowing such denial in the open records law.
    - If no records exist, forward the requestor to the agency that possesses the records, if known (KRS 61.87294).
    - Public agencies are not required to compile information or to answer questions, but to provide only specific records responsive to a request.
- Cite the relevant exemption in the Open Records Act for denying the request (e.g., KRS 61.878), and
- Advise the requestor of his/her right to seek review by KY's Attorney General. (KRS 61.880)

If an Open Records request is denied and the requestor complains, a copy of the denial shall be sent to the KY Office of the Attorney General the same day the record is denied (KRS 61.878(1)(m)3) or the same day LTDHD is made aware of the requestor's complaint regarding the denial of open records.

Fees, Charges and Procedures for Billing and Payment

A reasonable fee is charged for Open Records and shall be paid prior to mailing or releasing the records.
Fees for Open Records are as follows:

- Paper Copies: LTDHD may charge 10 cents/page for documents copied. If the number of paper copies is twenty (20) pages or more, LTDHD shall charge 10 cents/page.
- Copies of photographs, maps, and other non-written material, records stored in computer files: The cost of these materials will be charged a fee equal to the actual cost to the agency for producing the copies.
- Electronic Records: Electronically stored information may be sent through email if the file size is under LTDHD's current maximum file size limitation. There is no charge for sending Open Records by email or fax.
- Postage: The actual postage costs will be charged for providing documents.

There are no fees charged in the following instances:

- Open Records that are sent by email or fax.
- A copy of the *Open Records Policy* / procedure,
- A blank application or permit forms,
- A request from other state agencies or legislative requests.
- Media requests (TV stations, radio stations, newspapers, etc.) when there are less than 20 pages of paper copies. (If there are twenty (≥20) or more paper copies required to fulfill the request, there will be a charge of ten cents (10¢) per page.)

Tracking of Open Records Requests

The Records Custodian who processes the Open Records request shall maintain a spreadsheet of all Open Records requests. The following information will be documented and retained for three (3) years:

- Name of requestor (and associated company, if known)
- Date request is received,
- Information requested,
- Date Records are Sent to Requestor,
- Total Charges Billed / Paid, and
- Comments / Notes.

References:

Open Records Act: KRS 61.870 through KRS 61.884
200 KAR 1:020
Department for Public Health. Administrative Reference FY2022, Local Health Operations, page 33-34.
"The Kentucky Open Records & Open Meetings Acts: A Guide for the Public and Public Agencies. Office of the Attorney General Daniel Cameron, Attorney General. June 2021.