

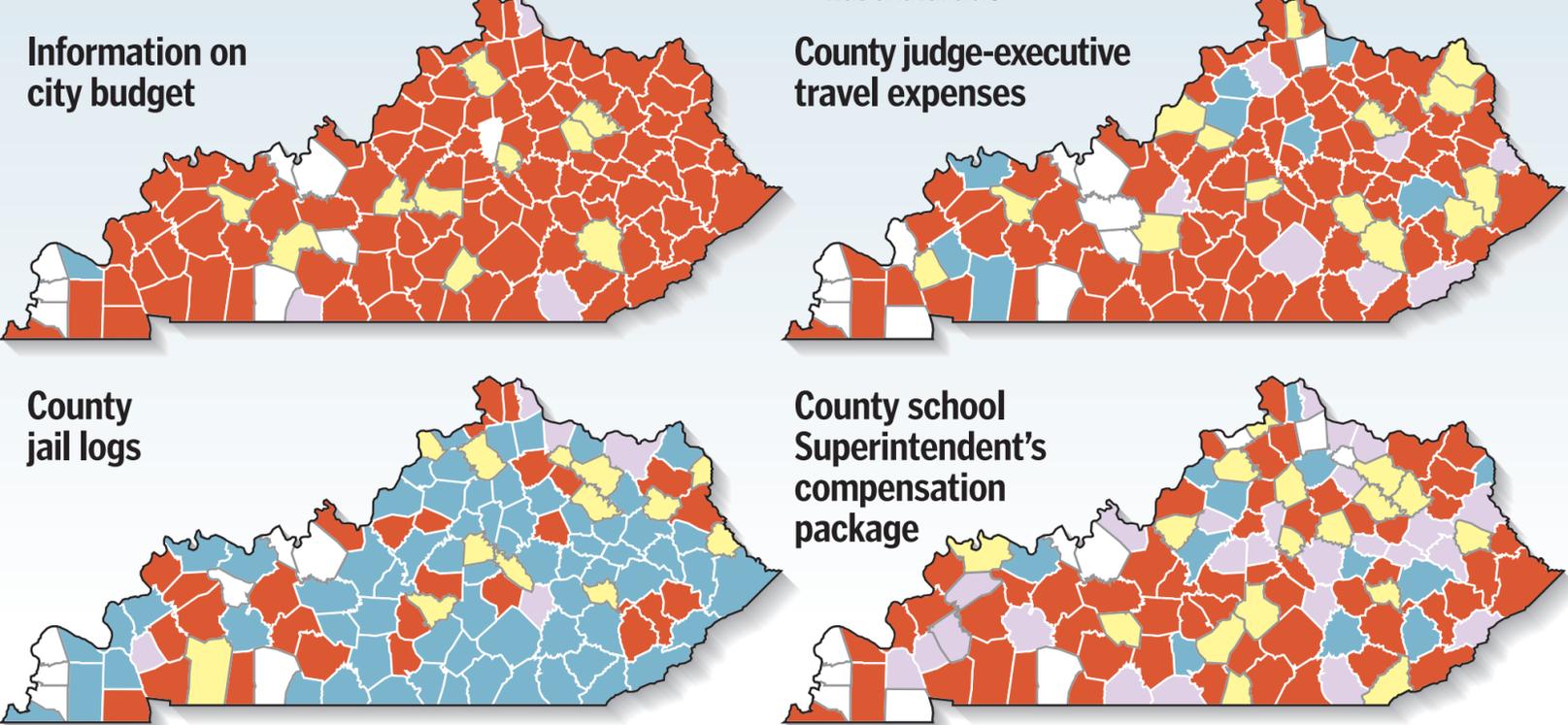


# YOURS FOR THE ASKING

## Kentucky's open records audit

### How open was each Kentucky county?

- Information was provided
- Information was not provided
- Outcome of results were uncertain
- Not applicable because office was closed or record was unavailable
- County was not audited



By Steve Durbin, The Courier-Journal

# More officials comply with law when they're familiar with it

## Cities have best rate; jail results are worst

Contributing to this story were Jim Hannah of *The Kentucky Enquirer*, Gregory A. Hall of *The Courier-Journal*, Herb Brock of *The Advocate-Messenger* and Bill Estep and Lee Mueller, both of the *Lexington Herald-Leader*.

Agencies that most often deal with public requests for information had the best compliance rates in the state's first public records audit.

Those who handle city budgets were the quickest to respond to auditors' requests for copies of that document.

Travel expense records of county judge-executives were easy to get in most cases, and public school superintendents, while a slightly suspicious lot, mostly offered up their contracts for inspection.

But one agency denied requests almost three quarters of the time. Guarding records as closely as prisoners, jailers in Kentucky turned down requests to see a list of inmates seven out of 10 times, the Oct. 21 audit showed.

The audit was organized by the Kentucky Press Association, The Associated Press, various newspaper and professional groups and

university student programs across the state.

John Nelson, immediate past president of the KPA and managing editor at *The Advocate-Messenger* newspaper in Danville, said names of people who have been arrested and are in jail are clearly a public record.

"In this country we don't arrest people or put them in jail secretly," he said.

The press association undertook the audit to find out how officials in different government agencies would respond to citizen requests for copies of various public documents.

More than 100 auditors, mostly college students and reporters for daily and weekly newspapers, were assigned to approach four agencies in 114 of the state's 120 counties. (There were not enough auditors to check the other six counties.)

In addition, a reporter for *The Associated Press* requested public records from the state attorney general's office, the Teachers' Retirement System of Kentucky and the Department of Fish and Wildlife Resources.

The auditors were told to act as though they had only a vague knowledge of the open records law to simulate the experience a citizen might have getting a record.

They also were told to provide their names if asked, but not to show identification or give a reason for wanting the records because the state's law does not require people requesting records to do so.

Citizens have a right to information about how their public officials and government are operating, said Jon Fleischaker, general counsel for the press association.

"The danger of that is secret gov-

ernment," Fleischaker said of decisions by officials to withhold public information.

### Results vary widely

The audit results ranged from almost total compliance to little compliance.

Of the 112 city budgets requested covering fiscal 2004-2005, auditors were given documents in 98 instances. Only one city agency refused to comply. In 10 counties the audit was judged not applicable, in three cases the outcome was uncertain.

The first-quarter 2004 expense records of county judge-executives were made available in 79 of the 109 counties audited. Only in eight counties did county officials not comply. In 14 counties the audit was judged not applicable and in seven cases the outcome was uncertain. In one case, the wrong record was requested.

Compliance by school superintendents was not quite as good. Of the 110 counties audited, the salary and compensation package was provided in 56 cases and denied 12 times. In 17 counties, the audit was judged not applicable and in 25 counties the outcome was uncertain.

But of the 113 county jails or police agencies audited, only 28 gave auditors the jail log from the past 24 hours; 67 did not. In 13 counties, the audit was judged not applicable because the jail was closed or the record was unavailable.

In five counties, the outcome of the jails audit was uncertain. In those cases, a request form was completed or a self-addressed, stamped envelope was left but there was no assurance of intent to comply. For the purposes of the audit, a

county was judged in compliance if it indicated it would send the record.

Of the three state-level agencies audited, each complied with the law. Two agencies permitted immediate inspection of the record and one mailed the information within three days.

### Jailers

Auditors were to ask for the log of people booked into the jail for the past 48 hours. In the case of counties with no detention facility, they were to ask police for a list of people transported to other jails.

Some jailers indicated they would provide the list of names to a reporter, but not just anyone who walked in; several said they would confirm if a specific person was lodged, but would not release a list of all inmates.

In Floyd County, an unidentified jail employee told auditor Rachel Stanley, a reporter with the *Appalachian News-Express*, she couldn't see the log, then walked away without giving her a chance to ask if she could talk to someone else, Stanley said.

Auditor Tim Travis, a student at Murray State University, reported that Crittenden County Jailer Rick Riley told him, "I'm not going to give you that information. See ya!"

Travis said he then told Riley that he had the right to see the requested information and Riley responded, "We will see about that."

Riley later said the two auditors who came to his small jail — which has no computer and no way to print out a list of inmates — were too pushy.

The jail has a list of prisoners posted on a board where the auditors could see it, Riley said, but they demanded that he provide a list.

James Kemper, former jailer in Franklin County and immediate past president of the Kentucky Jailers' Association, said jails keep several kinds of logs, some of which contain confidential information.

One problem with the KPA survey was that, in a number of cases, auditors were not specific enough about what they wanted to see, Kemper said.

KPA officials said one likely explanation for the low compliance rate by jailers is a lack of training.

Lisa Lamb, spokeswoman for the state Corrections Department, said new jailers must get 32 hours of training but the records law is not covered.

Shelby County Jailer Bobby Waits, current head of the jailers' association, said new jailers receive training soon after taking office. Jailers are then required to get 40 hours of training annually, he said.

Waits said the state Corrections Department approves the curriculum, and people certified through the department teach the classes. Jailers choose from a menu of sessions; open records training is available, but jailers are not required to take it, he said.

"There could be some that go through 10 years as jailer and never take that particular class," Waits said, adding, however, that the training and professionalism of jailers is significantly better than in the past.

### Judge-executives

In contrast to the jail records, the first-quarter expense records of county judge-executives were uniformly easy to get.

In Muhlenberg County, "everyone was extremely cooperative,"

See **AUDIT**, Page 5, col. 1